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In The

Supreme Court of the United States

October Term, 1974

No. 36, Original

THE STATE OF TEXAS,
Plaintiff,

vs.

THE STATE OF LOUISIANA,
Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior U. S. District Judge,
Lincoln, Nebraska
Special Master

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Lincoln, Nebraska
Special Master

I. INTRODUCTION

The matters heard by your Special Master and covered by this report follow from the opinion of this Court filed March 20, 1973 and reported as *Texas v. Louisiana*, 410 U.S. 702 (1973), and the order of this Court entered October 15, 1973 upon the motion of the State of Louisiana to enlarge reference to the Special Master.

Under the original opinion of this Court there remained for the Special Master to mark the geographic middle of Sabine River, Sabine Lake and Sabine Pass either by survey or other appropriate means. There was also specifically referred to the Special Master the ownership of the islands, if any, in the west half of the Sabine River, Lake and Pass. The United States was to be made a party to this proceeding. This was done and it now makes claim herein to only one island, to-wit, "Sam."

The purport of the motion of the State of Louisiana above mentioned to enlarge reference to the Special Master was to include in this case the establishment of Louisiana's lateral boundary with Texas in the Gulf of Mexico. The Solicitor General supported the Louisiana motion and suggested that the reference should be enlarged to determine all of the lateral boundary of Texas in the Gulf of Mexico. These motions were referred by your order of June 25, 1973 to the Special Master for report. Your Special Master's report thereon was the basis of your October 15th order which in part reads as follows: "The Report of the Special Master on Louisiana's motion to enlarge the reference to the Special Master to include the establishment of Louisiana's lateral boundary with Texas in the Gulf of Mexico, . . . is received, ordered filed and adopted."

Pleadings relating to the lateral boundary were filed

by the States of Louisiana and Texas and by the United States of America.

Each sets forth its separate claim. Texas set forth the method it regarded as proper for the location of its lateral boundary for a distance of three marine leagues in the Gulf of Mexico. Louisiana's lateral boundary in the Gulf extends for only three geographic miles[1] and it set forth its theory for its marking.

The United States asks that the Supreme Court declare the rights of the United States as against the States of Texas and Louisiana in the subsoil, seabed and natural resources underlying the Gulf of Mexico lying east of a line which begins at the midpoint of the closing line across the mouth of the Sabine River and which is stated to be a straight line starting between the southern tips of the Sabine River jetties and extending into the Gulf of Mexico more than three nautical miles from the coast of Louisiana. At the request of the Special Master at the conclusion of the final hearing a map was submitted to and marked by the Special Master as Special Master's Exhibit A. A reproduction of relevant portions of this map are attached to this report as Appendix A. The lateral boundary as claimed by each of the three parties is shown on this map and by the legends which appear thereon.

Originally claims were made by the United States and by the State of Louisiana in their separate pleadings to more than one island in the west half of Sabine River and Lake. By the time of the hearing in May, 1974

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[1] The terms geographical, marine or nautical mile can be used interchangeably and equals 6080.27 feet. The English statute or land mile is 5280 feet. Three nautical miles equal one marine league. The three-mile-limit under international law refers to three geographical miles, which is approximately 3.45 land miles. *See United States v. California*, 381 US 139, 148 (1965).

these claims were reduced to the island "Sam" only. Prior to the May, 1974 hearing, when it appeared that the United States was claiming that the island "Sam" lies within what is now the city of Port Arthur, Texas, the City of Port Arthur was notified and permitted to intervene herein.

Texas makes no claim to the three islands at the north end of Sabine Lake, perhaps because all three were originally selected by Louisiana under the Swamp Lands Grants of 1849 (9 Stat. 352) and 1850 (9 Stat. 519). The State of Louisiana subsequently patented these islands to individuals who now hold title thereto. Texas does claim that if the geographic middle of the Sabine River is located in the channel immediately to the west of Sabine Island, sometimes known as Shell Island, that two of these three islands will lie within the boundary of the State of Texas and that even if the geographic middle of the Sabine is established in the pass as claimed by Louisiana that one of these islands will lie within the State of Texas.

The parties had planned at the time of the New Orleans hearing to make oral arguments after briefs were filed. Thereafter they concluded to waive such argument. The matter now stands submitted for the report of your Special Master.

II. OUTLINE OF THE ISSUES

The issues as submitted and discussed in this report can be better understood if separated into five categories:

a) The determination of the geographic middle of the Sabine River from 32° to 30° north latitude. Roughly this is a line beginning on the north at the point where the thirty-second parallel crosses the Sabine River and continuing generally in a southerly direction to where

the Sabine River enters Sabine Lake. This is approximately the point where the thirtieth parallel crosses the river. Texas and Louisiana are in agreement as to this portion of the boundary, subject to your approval. The United States of America and the City of Port Arthur have no interest in this boundary and in this part of the controversy.

b) The determination of which of three passes is to be used in marking the geographic middle of the Sabine River where it enters Sabine Lake.

c) The location of the geographic middle of Sabine Lake, Sabine Pass, and of the jetties constructed into the Gulf of Mexico in event it is concluded that the jetties form part of the baseline or mark an extension of the Sabine River into the Gulf.

d) Whether or not the island designated historically and by the parties herein as "Sam" was in existence when Louisiana was admitted as a State in 1812; whether it existed at the time of the construction of the Sabine-Neches Canal[2] by the U. S. Corps of Engineers in approximately 1906-08; whether the United States has proven its claimed ownership of such island.

e) The lateral boundary line between the States of Texas and Louisiana, and between the State of Texas and the United States in the Gulf of Mexico and the principles to be applied in determining such lateral boundary line. This is the issue covered by the order of reference of October 15, 1973.

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[2] This canal, or portions thereof, does not bear the same name on all exhibits. It, or portions thereof, is variously designated Port Arthur Canal, Intracoastal Waterway, Sabine-Neches Canal and Sabine-Neches Ship Canal, among others. In this report I will use the term Sabine-Neches Canal.

III. THE BOUNDARY BETWEEN 32° NORTH LATITUDE AND 30° NORTH LATITUDE

Following pretrial discussions with your Special Master and many conferences between representatives of the States of Texas and Louisiana, including attorneys and engineers, the parties have agreed upon a series of twelve maps which have been received in evidence and marked Texas Exhibits AAA 1-12, on which the agreed boundary line between the States of Texas and Louisiana between the two numbered parallels has been clearly marked.[3] The parties are in agreement that it would cost not less than $250,000 to employ surveyors and make a field survey of this boundary line.[4] The parties are in agreement that this is presently unnecessary and will not be necessary in the foreseeable future. They are further in agreement that if in the future difficulties as to the boundary should arise between the two States that it will be possible for competent engineers to take the maps, Texas Exhibits AAA 1-12, and from such exhibits make a determination of the true boundary between the States at any point in dispute. Louisiana requested "that two copies of Texas Exhibits AAA-1 through AAA-12 be certified by the Master and both Texas and Louisiana be directed to deposit a certified copy in their respective Land Departments so that they will be available for reference by the public." (See p. 8, post-trial brief of Louisiana). The parties therefore request, and your Special Master recommends, that this Court accept the twelve maps constituting Texas Exhibit AAA 1-12,[5]

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[3] Concessions were made by each of the two States in order to reach an amicable settlement of the boundary in this area. Your Special Master commends the respective Attorneys General, special counsel and the States themselves for their willingness to negotiate this boundary.

[4] Surveying and marking boundaries on water is more difficult and more expensive than a similar survey on land. Louisiana estimated the cost of a survey at one half million dollars.

[5] Each of the States of Texas and Louisiana are in possession

as marking the geographic middle of the Sabine River and the true and correct boundary between the States of Texas and Louisiana for the area between 32° and 30° north latitude, and that a field survey should not be undertaken at this time. Your Special Master also recommends that copies of Texas Exhibit AAA 1-12 be certified and deposited in accordance with the Louisiana request above set forth.

IV. THE BOUNDARY FROM 30° NORTH LATITUDE INTO THE GULF OF MEXICO

The boundary in the major portion of this area is in dispute. Louisiana Exhibit DDD shows the contentions of Texas and Louisiana, the boundary line as claimed by Texas being printed in blue and designated approximate boundary Texas-Louisiana, and the boundary line as claimed by Louisiana being marked in red. For a considerable portion of the distance the claimed boundary lines, as will be noted by the Court, are quite close together. The chief dispute concerns determination of where the Sabine River flows into Sabine Lake and whether or not west pass, or middle pass or east pass, is to be used in determining the geographic middle of the Sabine River. There is also a boundary problem in connection with the jetties which were built in the Gulf of Mexico by the Corps of Engineers of the United States of America and which will be hereafter separately discussed.

The earliest map of this area is a map prepared by George Gauld in 1777 (See Texas Exhibit W). It is not clear from an examination of this map whether it shows any islands. None are so designated. However, small dots are observable in the lake area. If these represent

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of a copy of this exhibit. It seems proper if ordered by the Supreme Court, that your Special Master certify true and correct copies for each State as requested.

islands then there were numerous small islands throughout the area. This map is not helpful in determining this portion of the boundary. It is mentioned only because it is representative of the industry of all counsel to discover any relevant maps.

The next map of the area chronologically is an 1840 map, two copies of which are in evidence. One is identified as Louisiana Exhibit EEE-1, the other as U. S. Exhibit JJJ. These exhibits both show islands in the area where the Sabine River flows into Sabine Lake. They are also relied upon by the United States in connection with its contentions as to the island "Sam." This 1840 map is based upon a map made in 1837 and upon observations by a Major Graham during the field survey of 1838-39 next mentioned.

It was developed at the original hearing, the record of which was before this Court when your opinion reported as *Texas v. Louisiana, supra*, was filed, and is a part of the evidence of this hearing, that a field survey of this area was undertaken in 1838 by representatives of the United States and of the Republic of Texas following negotiations which began between the United States and Mexico. The survey was completed in 1839. The longhand journal of the Commission containing the surveyor's handwritten notes is in evidence as pages 120 to 164 inclusive, being item 13 of defendant Louisiana's Exhibit A. A printed copy of these notes is in evidence as pages 221 to 238 inclusive of item 14 of Louisiana Exhibit A and as pages 57 to 74 inclusive of Louisiana Exhibt S2.

Certain maps drawn by Major Graham are attached to this report but none, except Louisiana's Exhibit EEE-1, and U. S. Exhibit JJJ-1, both of which were drawn

by Major Graham, cover the area presently being considered in this portion of the Special Master's report.

An examination of these two exhibits shows that in 1840 there were two chief channels where the Sabine River entered Sabine Lake. One is on the east side of the largest island in the area and the other channel is on the west side of that island. This island, as has been noted, is sometimes called Shell Island and other times called Sabine Island. Soundings noted on these exhibits indicate both passes were 24 feet in depth in the area of Sabine Island whereas farther out in the lake in this area the depth was only three or four feet. One pass is named and marked on this 1840 map as the east pass and one is named and marked as the west pass. On later maps the pass marked east pass on the 1840 map is called middle pass and the eastmost pass which is unmarked on the 1840 map is called the east pass. Aerial photographs of the area, in evidence as Louisiana Exhibit X-1 and X-2, show clearly the three islands at the north end of the lake and the channels by which the Sabine flows into the lake. Your Special Master believes these aerial photographs support the recommendation hereafter made as to the pass to be used in determining the State boundary.

While Louisiana claims that the channel on the west side of the third island is the one which should be used in determining the geographic middle of the River, your Special Master is of the opinion that the pass marked east pass on Louisiana Exhibit EEE-1, and marked the middle pass in most of the subsequent exhibits, marks the true geographic middle of the River. This conclusion is borne out by Louisiana Exhibit 05 which was not prepared for the purpose of determining boundaries but is helpful because it shows a change in shape of the islands at the north end of the lake, and that four islands existed at the time of the preparation of Exhibit 05 in-

stead of three as shown by the earlier maps. Louisiana Exhibits X-1 and X-2, being the aerial photos above mentioned, show only three islands. The Special Master concludes that another Louisiana exhibit likewise supports this recommendation. The exhibit is Louisiana EEE which, on pages 4 and 11, contains maps showing townships 12 and 13 in ranges 14 and 15. These maps were drawn in December of 1850 and April of 1851. Both maps, particularly EEE-11, indicate that a greater volume of water went down the east fork although the west fork, as distinguished from the second west fork, did carry a substantial amount of water. It is also apparent from these exhibits that the fork which Louisiana claims should be used in marking the geographic middle of the Sabine did not carry a significant flow of water. It seems to your Special Master that it would be inequitable to locate the geographic middle of the Sabine River in an insignificant channel lying to the west of where the main volume of the Sabine's waters flowed in 1850 and 1851 or now flows as shown by the aerial photographs.

Texas Exhibit F also supports your Special Master's recommendation. For example, page 20 of Exhibit F is a map of Cameron Parish prepared by the Louisiana Highway Commission in 1937. The boundary between Texas and Louisiana is marked on this map as following middle pass as herein recommended. Similarly, page 29 of Exhibit F, being a map prepared in 1964 by the Louisiana Department of Highways in cooperation with the United States Department of Commerce, shows the state boundary following middle pass. In evidence are maps prepared by the State of Texas showing middle pass as the boundary (See Exhibit F, p. 32 and Exhibit F, pp. 78, 79). Exhibit F contains at page 36 a map prepared by the U. S. Corps of Engineers in 1956. It likewise indicates the boundary as being middle pass. Another

map introduced by Louisiana also supports this recommendation. It is page 20 of Louisiana Exhibit K. This map was prepared by the U. S. Corps of Engineers in 1910 in connection with the survey for the location of the Sabine-Neches Canal. It is observable from this exhibit that the pass which Louisiana contends should be used in determining the geographic middle of the river was narrow and carried but little of the flow of the river.

While no recommendation can be made which finds support in all of the maps of the area which have been introduced in evidence, and while the purpose of many of the maps was not to locate State boundaries, your Special Master believes, taking the map exhibits and the photograph exhibits as a whole, that they clearly establish that the pass more recently known as middle pass is the pass which should be used in determining the geographic middle of the Sabine River as it flows into Sabine Lake. It is interesting to note that this pass was used by the U. S. Geological Survey in the base map which constitutes Louisiana Exhibit DDD.

This finding and recommendation does not completely solve the problem of marking the boundary. Louisiana offered in evidence its Exhibit DDD and indicated in red thereon a line which it believes represents the geographic middle of the Sabine River south from 30° north latitude, through the Lake, Pass, and to the terminus of the jetties in the Gulf. Louisiana has also offered in evidence its Exhibit III and indicates thereon the same line in red shown upon Exhibit DDD. Louisiana has also marked on Exhibit III in green a line which Louisiana believes represents Texas' contention as to the true boundary through the Lake. Texas in its post-trial brief filed with the Special Master says on page 4 thereof, after referring to the numerous maps introduced by the State of Louisiana "The remainder of the Lake bound-

ary is properly shown in Louisiana Exhibit 'III'." This is followed with a paragraph entitled "Sabine Pass" reading

> "The boundary has been agreed upon in Sabine Pass, as evidenced by Louisiana Exhibit 'III' properly depicting the boundary in Sabine Pass."

The problem with this quote regarding the Lake boundary is whether Texas is agreeing to the line marked in red by Louisiana, which Texas does agree, as above noted, is the correct line through the Pass, or whether Texas is claiming the green line as the correct boundary in the Lake.

The two lines are very close together. In some places the red line is even to the advantage of Texas. The red line represents a more accurate measurement in that it contains various stations marked by degrees of longitude and latitude from its beginning through the Lake, the Pass and to the terminus of the jetties. For this reason, except at the uppermost portion of the Lake, your Special Master concludes to recommend the line marked in red upon Exhibits DDD and III as marking the true boundary between the States of Texas and Louisiana.

The line marked in red in the area of the passes at the north end of the Lake is based upon the use of the west-most pass. Since your Special Master has rejected Louisiana's contention as to the pass to be used and recommends use of the middle pass there is a portion of this red line which cannot be used.

Your Special Master's conclusions are that the line marked in red on Louisiana Exhibits DDD and III be used as the lateral boundary beginning at the upper portion of each Exhibit at point 30° 00′ 00.000″ 93° 46′ 07.952″, which is the southmost point of the agreed boundary shown on Texas Exhibits AAA 1-12. I conclude that the line shown in red upon Exhibits DDD and

III beginning at the point last mentioned continuing to point marked 29° 59′ 34.754″ 93° 46′ 57.677″ should be followed as marking the geographic middle of the Sabine River between said points. From this point last mentioned it appears that the line marked in blue on Louisiana Exhibits DDD and III and designated "Texas Louisiana Approximate Boundary Orange Co. Cameron Parish" correctly marks the boundary line through the middle pass to the northmost point of the green line shown on Louisiana III and following the green line to where it joins the Louisiana red line at the point marked 29° 58′ 31.135″ 93° 47′ 58.608″. From there on to the point at the terminus of the jetties marked X=1,205,205 Y=379,935, 29° 41′ 15.323″ 93° 50′ 11.722″ the line marked in red should be adopted as correctly marking the geographic middle of the Lake, Pass and jetties and the boundary line of the States of Texas and Louisiana between the two described points. I recommend that the right be afforded the States of Texas and Louisiana to adjust said boundary in Sabine Lake by agreement as they have done from 32° north latitude to 30° north latitude if agreement can be reached prior to any hearing on this recommendation in this report or within such time as this Court may deem proper.

IV(a) THE JETTIES

In the last paragraph, and elsewhere, reference has been made to the jetties which exist in the Gulf of Mexico and are shown on all of the maps of this portion of the Gulf drawn in the last eighty years. Their construction began in the 1880's. They were constructed by the U. S. Corps of Engineers. The purpose of the jetties was to provide an adequate ship canal to the Sabine Pass for the benefit of such cities as Port Arthur, Beaumont, and others. The jetties were extended from time to time as congressional appropriations became available. They

were completed to their present terminus in approximately 1936. These two jetties are each approximately 3.1 miles in length. The jetties extend from 29° 41′ 15.223″ latitude, 93° 50′ 11.722″ longitude (midpoint of Sabine, natural mouth) to a position in the Gulf at 29° 38′ 37.329″ latitude, 93° 49′ 30.940″ longitude, which is the midpoint of the jetties in the Gulf at terminus.

They are hereafter referred to in connection with the recommendations as to the lateral boundary in the Gulf of Mexico.

On most of the maps introduced in evidence by both States the geographic middle of the jetties is designated as the boundary line between the States of Texas and Louisiana. There is considerable evidence that these two States have recognized the geographic middle of the jetties as their boundary in the enforcement of fish and wildlife laws. There are some exceptions to this but your Special Master concludes without setting forth the affidavits in detail that the conclusion is justified that both States, since the jetties' construction began, have recognized the geographic middle of the channel between the two jetties as being the boundary line between the two States. Your Special Master concludes, under the law of prescription and acquiescence[6] that this boundary has been sufficiently recognized by each State, whereby the boundary between the States of Louisiana and Texas should be determined to be the geographic middle of the two jetties as they extend into the Gulf of Mexico as that geographic middle has been determined and marked upon Louisiana Exhibit DDD. This line bears the legend "Approximate Boundary Louisiana-Texas Jetty Channel."

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[6] For a discussion of the law of prescription and acquiescence see Original Report of Special Master beginning on page 27.

This conclusion does not rest solely upon the law of prescription and acquiescence. Under Article 8 of the Geneva Convention discussed in detail infra, jetties are a part of the coast. It follows that a median line equidistant from each jetty is the geographic middle of the jetties. Both Texas and Louisiana now seem to agree that the median line principle applies in Sabine Lake and in Sabine Pass. To your Special Master it follows logically that the median line principle should be applied to the jetties.

There is evidence and testimony from which it could be found that the jetties extend the river and that the mouth of the river is now actually at the gulfward terminus of the jetties (See testimony of Dr. Robert D. Hodgson, transcript at 524, 529-531.[7] See also U. S. Exhibit NNN, Texas Exhibit FFF). The geographic middle of the river is therefore the middle of the jetties.

Your Special Master recommends that the line marked on Louisiana Exhibit DDD and above described be determined by the Court to be the geographic middle of the two jetties and the boundary line between the States of Texas and Louisiana to the terminus of the jetties in the Gulf of Mexico.

IV(b) ISLAND "SAM"

The opinion of this Court on March 20, 1973, *supra*, discussed the recommendation of the Special Master as to the ownership of the islands in the west half of the Sabine River. The Court approved the recommendation as to the ownership of the islands in the east half of the

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[7] Dr. Robert D. Hodgson is the geographer to the Department of State, Director at the Office of the Geographer in the Bureau of Intelligence and Research, and author of numerous articles on political geography. See transcript pp. 513-518.

Sabine, holding that all such islands belong to the State of Louisiana. It was the opinion of the Court, as your Special Master reads it, that the United States of America may have a claim to the islands, if any, in the west half of the Sabine, and for that reason it ordered that the United States should be made a party to this proceeding and afforded the opportunity to present any claims. While in the first pleadings filed by the United States herein it appeared to make claim to the islands formed by the forks of the Sabine as it entered Sabine Lake lying west of middle pass and to Dooms or John's Island and to three islands in the area of Taylor's Bayou, by the time of trial and now the United States claims only the island designated "Sam." It lies north or northeasterly of Taylor's Bayou, which is a point of reference on the west side of Sabine Lake and marked as such on all maps except the 1777 map. As to the three islands at the north end of the lake, some of which are west of the geographic middle of the Sabine River, the United States now makes no claim, perhaps because it relinquished title to these islands to the State of Louisiana under the Swamp Lands Act (See Louisiana Exhibit EEE).

The location of "Sam" is probably best shown upon U. S. Exhibit DDD.[8] The United States estimates that it contains 59,000 square feet, which is slightly more than one and a third acres. Island "Sam", as located by the United States witnesses, is a part of Pleasure Island which in turn, at the claimed location, is a part of the City of Port Arthur, Texas.

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[8] The United States in its Exhibit YYY (See Appendix ii) sets forth three different measured positions and three different adjusted positions depending upon which of four maps is used for island "Sam." The differences in measurement are in seconds but point up the difficulty of precisely locating Island "Sam."

Some witnesses have indicated that the Sabine-Neches Canal was constructed through the point estimated by the government to be the location of the Island "Sam." The Special Master in the appendix attached to his first report at page 104 discussed the evidence introduced at the first hearing relative to Pleasure Island. Reference is made to that report and it will not be repeated here. It is a valuable adjunct to the City of Port Arthur and for the most part has been built up and developed during the past half century.

Before discussing the evidence relating to Island "Sam", which it is believed received its name because it was a control or reference point used in an 1886 survey of the area, certain preliminary observations should be made.

If the Special Master was right in his original report that all islands in the Sabine River were granted to the State of Louisiana by the United States when Louisiana was admitted to statehood, then the United States has no claim to Island "Sam" and the Court needs only to resolve the conflict between Texas and Louisiana as to the island. Louisiana claims that it, and not the United States, owns this island. As your Special Master pointed out in the original report, as between Texas and Louisiana it is possible for one state to have obtained title by acquiescence and prescription to lands claimed or originally owned by the other state. While Louisiana received a patent from the United States to the three islands in the north part of the lake, including Sabine Island, and later patented or deeded these islands to private parties, there is no evidence that Louisiana ever made any claim to or exercised control over any of the three islands in the Taylor Bayou area, including Island "Sam." Texas at all times has claimed these islands. Hence, if the Court concludes, as your Special Master

concluded in his original report, that all islands in the Sabine existing in 1812 were conveyed by the United States as a part of statehood to Louisiana, then further discussion as to the ownership of Island "Sam" is unnecessary. By application of the doctrine of acquiescence and prescription, as between the States of Texas and Louisiana, Island "Sam" belongs to Texas.

The Special Master will proceed, however, to discuss the claim of the United States to Island "Sam." It is elementary that the burden of proof is upon the United States to show by a preponderance of the evidence that such an island existed at the time of the construction of the Sabine-Neches Canal and the construction of Pleasure Island, and to show its size and location.

By way of background, another fact must be recognized, namely, that many islands have existed in Sabine Lake and later disappeared. An example is an island known as Dooms Island or John's Island (See Louisiana Exhibit III, Texas Exhibit BBB-1 or U. S. Exhibit FFF). It has been known by both names and so designated by the map makers. At the hearing, on which your Special Master's original report was based, Louisiana was making claim to it. There was a dispute between the parties as to whether the island still existed. Both States are now in agreement that it has disappeared. There is in evidence a record of many memorable hurricanes which have struck the Gulf coast since 1873 (See U.S. Exhibit LLL). It is a fair deduction that torrential rains and hurricanes have each played a part in causing some islands to completely disappear.

It is clear that an island known as "Sam" did exist at one time. The 1840 map above mentioned and the original surveyor's notes show that there were three islands in the area of Taylor's Bayou. Two were approximately at the mouth of the Bayou and a third, which

the United States says is "Sam", was located to the north or northeast of Taylor's Bayou approximately one mile. By 1885 the middle island of these three had disappeared (See U. S. Exhibit EEE). It is the claim of Texas that in the early 1900's "Sam" (and perhaps the other island in the Taylor's Bayou area) was destroyed by the dredging operation of the U. S. Corps of Engineers when dredging the Sabine-Neches Canal and that by destroying the island the United States has abandoned any claim thereto. It should be here pointed out that a large part of Pleasure Island was created by piling up on the east side of the channel the sand dredged from the lake in the creation of the Sabine-Neches Canal.

As indicated above, the earliest maps show an island in this general area. Its size is difficult to measure. Joseph T. Long, whose affidavit is in evidence (U. S. Exhibit YYY), and whose deposition is in evidence as U. S. Exhibit XXXX, testified to a square footage of 59,000 qualifying the size to say that it could vary "plus or minus ten percent probably." Long is the witness who attempted for the United States to translate the location of this island "Sam" from the earlier maps to the present map of the City of Port Arthur. He says that none of the exhibits used by him for this purpose were drawn for the purposes of land location and definition and that the maps were prepared on a scale of one inch on the map representing sixty thousand inches on the ground; that from an engineer's standpoint that sort of a scale is not considered "acceptable accuracy for purposes of defining land for title and ownership"; that a civil engineer would not rely on such a map as U. S. Exhibit HHH to locate a tract of land. See U. S. Exhibit XXXX at p. 50-51.

"Sam" was not shown upon Texas Exhibit RRR,

which was a U. S. Coast and Geodetic Survey map. From that fact Texas and Port Arthur argue that the island had disappeared before 1910 and the construction of the canal by the U. S. Corps of Engineers. The United States offered, over objection, additional evidence to explain the absence of Island "Sam" on some of these maps which were in evidence. The gist of this evidence is that "Sam" was shown on maps prior and subsequent to Texas Exhibit RRR and that it was left off of Texas Exhibit RRR by mistake or inadvertence. It is quite likely that this is correct. It also seems true that most of these early 1900 maps were based upon the 1885 map made by the United States Coast and Geodetic Survey and reflected the area as of 1885 and do not truly reflect the area in the early 1900's.

This becomes particularly important in view of the testimony by affidavit of Tom Ellis, Texas Exhibit JJJ; Carlyle J. Plummer, Texas Exhibit KKK; Carroll Holt, Port Arthur Exhibit CCC, and in the light of Port Arthur Exhibit AAA, pp. 1 and 2. Mr. Ellis has lived in Port Arthur since 1895, at which time he was ten years of age. He tells of fishing in the area and is certain that there was no island such as "Sam" between 1895 and 1910. Carlyle J. Plummer was born in 1895; his father was a harbor pilot and he went with him along the west part of the lake on many occasions prior to the 1909 dredging of the Sabine-Neches Canal. He says he never saw such an island as "Sam" and if it had existed he would have seen it. Carroll Holt was born in 1877 and came to Port Arthur in 1893; he served in the Spanish-American War; was residing on Lakeshore Drive at the time of the construction of the Sabine-Neches Canal. He worked on Pleasure Island in the amusement business a part of the time and fished and boated frequently along the whole western shore of the lake and says there was no island along the west shore prior to the construc-

tion of the canal until Pleasure Island was created by dredging.

Your Special master concludes and reports that an island named "Sam" did at one time exist; that its location was approximately as is claimed by the United States; that its size was not definitely known; that no maps have been introduced in evidence from which an accurate configuration of the island could be made. Your Special Master concludes, and so reports, that the Island "Sam" did not exist at the time of the dredging of the Sabine-Neches Canal and further concludes if it did then exist that it was destroyed by the action of the U. S. Corps of Engineers. Your Special Master concludes that the United States has not shown by a preponderance of the evidence the existence of Island "Sam" or its size with sufficient certainty to award to the United States the portion of the City of Port Arthur, Texas, which it claims as "Sam." Your Special Master recommends that the claim of the United States to any island in the west half of Sabine Lake be denied.

V. THE LATERAL BOUNDARY IN THE GULF BETWEEN TEXAS AND LOUISIANA

Fixing the lateral boundary in the Gulf between Texas and Louisiana will result in fixing the boundary between the United States and Texas since the same principles are applicable to both controversies.

As a background for this discussion, certain matters should be mentioned and their effect discussed.

The first question to be determined is whether or not the Geneva Convention on Territorial Sea and Continuous Zone applies to this boundary. The so-called Geneva Convention done at Geneva April 29, 1958, and thereafter ratified by the United States and effective as of September 10, 1964 is in evidence as U. S. Exhibit

000. Particularly applicable to this case are Articles 12 and 8:

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.
15 U.S.T. (pt. 2) 1607, T.I.A.S. No. 5639

It is the position of the United States that the Geneva Convention applies to this dispute. It is the position of the State of Texas that the dispute is purely a domestic matter and that at most international law is useful only as an analogy. This Court has stated on at least three occasions "principles of international law . . . apply also to boundaries between States constituting this country." *Wisconsin v. Michigan*, 295 U.S. 455, 461 (1934); *also, New Jersey v. Delaware*, 291 U.S. 361, 378 (1934); *Louisiana v. Mississippi*, 202 U.S. 1, 49 (1906). In *United*

States v. California (sometimes called the first California case), 332 U.S. 19 (1947), the Court held that the United States as against California possessed paramount rights in the land beneath the Pacific Ocean seaward of the low-water mark and outside of inland waters. This holding was applied to Louisiana in *United States v. Louisiana*, 339 U.S. 699 (1949) and in the same case to Texas (see 339 U.S. 707).

Thereafter, Congress passed the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315, on May 22, 1953. The act was sustained as constitutional, *Alabama v. Texas*, 347 U.S. 272 (1953).

The Submerged Lands Act was interpreted in *United States v. Louisiana, et al.* 363 U.S. 1 (1960). Texas was held to be entitled to a grant of three marine leagues from her historic coast for domestic purposes, while Louisiana was held to have a three geographic mile boundary.

It is of note that nothing is said in *United States v. Louisiana, supra*, about lateral boundaries between States. In fact, in all of the cases dealing with the Submerged Lands Act before this Court prior to this dispute, nothing is decided about lateral boundaries between the States. The Act has been described as a quitclaim grant from the United States to the coastal states. The purpose of the grant was to give to the states limited rights to the seabed. The Act did not deal with any of the boundaries of the respective coastal states vis-a-vis adjoining coastal states. The Act provided every coastal state with a three geographic mile strip of seabed, and further provided for a three league strip of seabed if the state could prove (1) an historic boundary of that distance and (2) approval by the Congress when the state was admitted into the Union.[9] Only the Gulf

[9] See § 2 of Submerged Lands Act, 43 U.S.C. § 1301 and § 4,

Coast boundaries of Texas and Florida were held to qualify for the three league boundary. The litigation prior to this case has focused almost entirely on the definition of the coastline from which the three mile or three league distance is to be measured. Thus, only the seaward reach or width of the grants has been litigated in the prior cases. The lateral division of the grants was not litigated. Crucial to the disposition of the instant dispute, however, is the determination of the coastline to be employed in the construction of the lateral boundary between Texas and Louisiana. Texas argues that the jetties, which would be considered part of the coastline under Article 8 of the Geneva Convention, should not be considered as part of the coastline for the purpose of fixing the lateral boundary. The United States and Louisiana argue the contrary view.

In *United States v. California*, 381 U.S. 139 (1964), sometimes called the second California case, this Court further interpreted the Submerged Lands Act. Following the first California case, a Special Master was appointed by this Court to determine for specific coastal segments the line of ordinary low water and the outer limit of inland waters. The report was filed in 1952 but lay dormant until 1963, probably because of the passage of the Submerged Lands Act in 1953. In 1963 the United States revived the report. The United States argued that the Submerged Lands Act simply moved the grant out three miles from the line established by the 1947 decree. California argued that the grant included, and was to be measured from, what the states historically considered to be "inland waters" at the time they were admitted as States.

While the Act defined "coastline" it did so in terms of the seaward limit of "inland waters." The Act no-

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43 U.S.C. § 1312, as interpreted in *United States v. Louisiana*, 363 U.S. 1, 25-30 (1960).

where defined "inland waters." It thus became the responsibility of this Court to define "inland waters." It did so, holding that the term "inland waters" as used in the Submerged Lands Act would conform to the definition of that term as used in the Geneva Convention. See 381 U.S. 139, 161-167.

Again, it is to be noted that nothing was decided in the second California case about state lateral boundaries.

In 1967 in *United States v. Louisiana, et al.*, 389 U.S. 155 (1967), Texas made the claim that its coastline extended to the seaward edge of the jetties in the Gulf of Mexico discussed above, and that consequently it owned the submerged lands more than three leagues from its natural shore line. In making this claim Texas attempted to apply the Geneva Convention. This Court held that the Texas claim under the three-league grant must be measured by the historic boundary of § 2(a) of the Submerged Lands Act, which existed in 1845 when Texas entered the Union, and that such a boundary could not be measured from artificial jetties built long thereafter. It should be here noted that the issue of what constituted the coastline from which the three-league grant was to be measured was specifically reserved in *United States v. Louisiana*, 363 U.S. 1, the 1960 case. In the 1967 *Louisiana* case the Court stated: "Texas now claims that, for purposes of the 3-league grant, its coastline extends to the seaward edge of artificial jetties constructed by it in the Gulf of Mexico. . . ."[10] The Court framed the issues as follows: ". . . whether Congress intended that this grant, based as it is on the historical boundaries of the State, be measured

[10] The facts as to jetty construction brought out at the New Orleans hearing in this case are to the contrary of this quoted statement. The United States Corps of Engineers, not Texas, built the jetties.

from artificial jetties constructed many years after the State's entry into the Union." Texas relied on the second California case, 381 U.S. 139 (1965), as support for its use of the jetties. In that case the Court determined that for the three mile tract granted to every State by § 4 of the Submerged Lands Act, 43 U.S.C. § 1312, the Convention on the Territorial Sea and Contiguous Zone would be used to define the term "coastline." *See, United States v. California*, 381 U.S. 139, 165. The Court declined to use the jetties in determining the width of the Texas historic grant because, under Section 2(a) of the Submerged Lands Act, Congress had designated the boundary of the Gulf State ". . . as it existed at the time such State became a member of the Union. . . ." The Court held since Texas obtained a three league grant under § 2(a) that it could not use the jetties to expand the grant beyond three leagues from the historic coast. The Court states:

> ". . . what Congress has done is to take into consideration the special historical situation of a few Gulf States and provide that where they can prove ownership to submerged lands in excess of 3 miles at the time they entered the Union, these historical lands will be granted to them up to a limitation of 3 marine leagues. No new State boundary is being created, but a State which qualifies is simply being given the same area it had when it entered the Union."
>
> * * *
>
> "The three-mile grant involved in the second *California* case is not keyed to the State's boundary as of any particular date, but the three-league grant is keyed to a State's boundary as of the date it entered the Union." 389 U.S. 155, 159.

It later concluded:

> "[N]o definitions are required by this Court and there is no need to resort to international law; Texas has simply been given that amount of submerged land it owned when it entered the Union." 389 U.S. 155, 160.

The Court went on to say:

> "This is a domestic dispute which must be governed by the congressional grant. There is no reason why an international treaty should be applied when it simply works to take away land from the United States in order to give to Texas more land than it ever claimed historically." 389 U.S. 155, 161.

Recently, in 1969, in *United States v. Louisiana*, 394 U.S. 1, a case sometimes known as the Texas boundary case, the Court gave further consideration to the Texas claim. The United States and Texas had agreed on the 1845 coastline by stipulation, (footnote 2 of opinion). However, since 1845, the coastline had undergone substantial changes due to erosion and accretion. A dispute arose between the United States and Texas because of the Submerged Lands Act express limitation in § 2(b) that in no event shall the boundaries of the grant of submerged lands "be interpreted as extending from the *coastline* . . . more than 3 marine leagues into the Gulf of Mexico." Texas argued that this limitation should be read as referring to the 1845 coastline. The United States argued the limitation referred to the presently existing coastline or as that coastline exists in the future, as contemplated by the Convention on the Territorial Sea and Contiguous Zone. The Court agreed with the United States that the limitation of § 2(b) was to be read as measuring from a current coastline as defined by the Convention. The Special Master will not reproduce at length any portion of the opinion authored by Mr. Justice Brennan, but concludes from the opinion that under Section 2(b) of the Submerged Lands Act the Texas three league grant is measured by the Convention rules using modern, ambulatory coastlines. It should be noted that the Court again emphasized its reliance upon the Convention for the definition of terms used in the Submerged Lands Act. It thus appears that Texas by

reason of its historical boundary is entitled to a grant of a three marine league tract as measured from its 1845-1849 stipulated coastline, but in any event that the grant cannot be greater than three marine leagues from the modern, ambulatory coastline determined under the rules of the Geneva Convention.

Louisiana measures its three mile tract from the Convention coastline, which includes the east jetty. *United States v. Louisiana*, 394 U.S. 11 (1969).

Your Special Master points out that the Geneva Convention will determine any future changes that might limit the Texas grant under § 2(b). Thus, for both Texas and Louisiana the Convention is applicable to any future limitation of their grants.

Your Special Master concludes, and so reports, that the Geneva Convention should be applied in the determination of this lateral boundary dispute. Article 12 was specifically drafted to provide the most equitable means of determining a lateral boundary. The prior case law indicates the Convention coastline applies to Texas and Louisiana. To employ an historic coastline to settle a modern boundary dispute is not in accord with the evidence introduced which indicates that the most modern, up-to-the-minute maps are the first choice of political geographers and cartographers (See U. S. Exhibits QQQ, SSS, TTT and testimony of Dr. Robert D. Hodgson at pages 559-569 of transcript.).

The administration of two coastlines for different purposes is not practical nor desirable. In the second California case, referred to above, this Court was faced with the possibility of employing a coastline other than the Convention coastline. The Court emphasized that the Convention coastline is used by the United States in its international relations, and ruled against a different coastline for Submerged Lands Act purposes. The

same rationale applies here. Texas and Louisiana have modern, ambulatory, Convention coastlines for important Submerged Lands Act purposes. To introduce an historic coastline for these two states for lateral boundary purposes would not be practical. *See United States v. California*, 381 U.S. 139, 165 (1964).

Applying the Convention also takes into account the jetties as part of the coastline. There is evidence (see Louisiana Exhibit VVV, Louisiana Exhibit WWW-1 thru -10, and evidence on prescription and acquiescence) that the jetties are considered landmarks relied upon by the public and by some state officials as marking the lateral boundary. The use of Article 12 also produces an equitable result in your Special Master's opinion, while the lines suggested by Texas and Louisiana do not produce an equitable result.

Your Special Master believes the position of the United States to be the most equitable and recommends that the line marked as "United States" on the exhibit requested by your Special Master, attached as Appendix A, be adopted as the lateral boundary of Texas and Louisiana and of Texas and the United States. This line is the result of an application of Article 12 of the Geneva Convention to the unique facts of this case.

Under Article 8 the "outermost permanent harbour works" in this case are the jetties at the entrance of the Sabine River into the Gulf of Mexico. These jetties, under Article 8, "shall be regarded as forming part of the coast." *See also, United States v. Louisiana, et al.* 394 U.S. 11 (1969). Thus, the coastline of Texas and Louisiana are opposite and adjacent within the meaning of Article 12.

Applying Article 12, the "nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured" are the gulfward

tips of the jetties. A median line is then constructed using these points. A median line is a line on which every point is equidistant from these nearest points on the baseline, i.e., the jetties.

The proper procedure for the construction of a median line is contained in Shalowitz, *Shore and Sea Boundaries* (1962), pp. 234-235. The United States and Texas are in agreement that the median line principle is to be applied. Louisiana does not agree. The debate focuses on the baseline points to be used in the construction of a median line. Given a set of baseline points, one and only one true median line can be constructed. The median lines proposed by the United States and Texas differ only in the choice of baseline.

As pointed out in the testimony of Dr. Hodgson, p. 548 Transcript, the baseline in general is determined by the low water mark as represented on recognized charts of the coastal state, but the Convention also provides for the baseline to include river closing lines, bay closing lines, permanent harbor works, and other points such as low tidal elevations within the territorial sea. Under the Convention the natural shoreline is not used to construct an equidistant lateral boundary. Rather, a "baseline" which includes such structures as the jetties, is employed to define the areas of each state so that a lateral boundary can be constructed between them. U. S. Exhibit MMM shows approximate representations of lateral boundaries drawn from a natural shoreline (red line) and from a Convention baseline (dark blue line extended from the jetties). The second California case held that the "coastline" of the Submerged Lands Act and the "baseline" of the Geneva Convention is the same line. *United States v. California*, 381 U. S. 139, 164-165 (1965).

The use of both jetties is required by Article 8 and

the Convention's definition of baseline. Louisiana's coastline includes the east jetty for Submerged Lands Act purposes. The Texas Submerged Lands Act limitation under § 2(b) is measured from a Convention coastline. The inclusion of either the east or the west jetty without its counterpart as part of the coastline, and hence part of the baseline, would create an inequitable division of the off-shore area granted to the States. The line marked "United States" on the Special Master's exhibit complies with Article 12 and is recommended as the proper lateral boundary.

Your Special Master was hopeful when the report of Judge Albert B. Maris in *United States v. Florida*, No. 52 Original (U. S. Exhibit BBBB), was first called to his attention that it would be found controlling on the issue now being discussed. Judge Maris is regarded by your Special Master as one of the ablest of our federal judges. The issue was before Judge Maris. He held that the jetties formed a part of the coast. This finding, however, was a result of an agreement by the two parties involved, to-wit, the United States and Florida. Thus, the case has no controlling effect in my recommendations or in your determinations. The fact, however, that this principle was agreed to by the United States and Florida and approved by Judge Maris does give support to the recommendation herein contained that justice and equity will be best served by using these jetties as a part of the coastline in making the determination and in applying the Shalowitz principles.

VI. LATERAL BOUNDARIES PROPOSED BY TEXAS AND LOUISIANA IN THE GULF OF MEXICO

At the request of your Special Master,[11] an exhibit was prepared showing the contentions of the parties re-

[11] Transcript at 753-754, 930-935. "And I will consider that it

garding the lateral boundary, and it is attached to this report as Appendix A in reduced form. The original full sized exhibit is available for inspection with the other exhibits introduced by the parties. The Special Master's exhibit depicting the various lines is constructed upon a composite of three separate maps that have been put together to reflect more than seventy miles of shoreline on each side of the jetties. Thus, the overall relationship of the various lines to one another and to the coastline is shown. The reduction, Appendix A, does not reflect the coastline on each side of the jetties sufficiently, but clearly does show the relationship of each of the proposed lines to the other lines.

It is the belief and recommendation of the Special Master that the line marked "United States" should be adopted as the lateral boundary between Texas and Louisiana and between Texas and the United States. The reasoning in support of such recommendation has been set forth. An analysis of the other proposed boundary lines is in order.

VI(a) THE LOUISIANA CONTENTIONS

Louisiana's primary contention is a line extending true south from the midpoint of the closing line of the jetties into the Gulf of Mexico three geographic miles. This is Louisiana's "statutory line." (See Louisiana Exhibit DDD, depicting this statutory line standing alone.) Louisiana Exhibit AAA-2, Act. No. 32 of the 1954 Regular Session of the Louisiana Legislature contains the specific language describing this boundary line. Louisiana Exhibit AAA-3, Act. No. 33 of the 1954 Regular Session of the Louisiana Legislature, attempted to set the Louisiana gulfward boundary at three marine leagues from

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is a part of the evidence that everybody can examine, including the people to whom I report." p. 933.

the Louisiana coast, and attempted to define the Louisiana coast. In *United States v. Louisiana*, 363 U.S. 1 (1960), this Court held that Louisiana's gulfward boundary was not three marine leagues but rather three geographic miles and furthermore in the *Louisiana Boundary* case, 394 U.S. 11 (1969), this Court held that Louisiana's coast is defined by the Geneva Convention. Art. 33 is of interest due to the limitation found in § 2 where it is stated that the designation of the coastal parishes on the plat map shall not be taken or construed as intending to affect the common maritime boundary between Louisiana and the States of Mississippi and Texas.

A statutory enactment by a state which attempts to fix a boundary is not binding upon its neighbors. This is recognized by the very language of the Louisiana statute. In regard to the width of the off-shore grant, the Submerged Lands Act was drafted to exclude the possibility that a state might be able to establish a present boundary claim based on extravagant unilateral extensions. *United States v. Louisiana*, 363 U.S. 1, 27 (1960). The same principle must apply to any attempt to fix a lateral boundary by an act of a state legislature.

Louisiana's statutory line must also be rejected because it is not a "median line" as required by Article 12 of the Geneva Convention. Geographically the Louisiana statutory line is closer to the Texas coastline than to the Louisiana coastline and is not therefore a median line.

Louisiana's first alternative position is a line extending true south from the 1845 west bank land boundary (See Special Master's Exhibit; Louisiana Exhibit KKK). Louisiana argues that such a line runs parallel with the meridian at 93° 50′ and that extending a state land boundary that approximates a meridian or parallel is an

acceptable manner of constructing a lateral boundary. Under the Convention, however, this first alternative position must be rejected as it is not a median line. This method of boundary construction was not employed in Art. 12 by the drafters of the Geneva Convention.

Since this Court has already approved the Special Master's recommendation that the boundary line is the geographic middle of the Sabine River, it is clear that any extension from any point other than the geographic middle of the Sabine would not be appropriate.

Louisiana's second alternative is a line drawn down the geographic middle of the Sabine from a point at the head of the jetties to the midpoint at the closing line at the gulfward terminus of the jetties which is then extended south 12° 30′ 002.2″ east (south 13° 44′ 45.8″ E true). [See Special Master's Exhibit; Louisiana Exhibit 000.] This proposed boundary follows Louisiana's conception of the general trend of the coast in which this trend of the coast is used at the baseline in constructing the boundary. The trend of the coast theory was rejected by the Geneva Convention draftsmen in 1958 as too subjective a method of constructing boundaries, and it must be rejected in this case. There are many possible trends to a coastline depending on the surveyor. This line does closely approximate the line marked "U.S." However, it is the methodology of the trend of the coast theory of boundary construction that is not trustworthy rather than any particular result.

In constructing the boundary in Sabine Lake, Louisiana adopted and employed the median line concept, and recognized the median line as doing equity in Sabine Lake. However, Louisiana appears to argue that the proposed lines that extend due south into the Gulf, while not median lines, do equity there because Louisiana is somehow entitled to areas "beneath" the Louisi-

ana coast. This is circular reasoning, since "beneath" the coast assumes a due south line is proper. None of the theories set forth by Louisiana comply with Article 12 of the Geneva Convention. Your Special Master recommends that the Louisiana proposed boundaries be rejected.

VI(b) THE TEXAS CONTENTION

Texas urges that the proper lateral boundary is the median line constructed upon the basis of the shorelines and geographic middle of the natural mouth of the Sabine River as they existed in 1845-1848. (See Special Master's Exhibit; Texas Exhibit DDD.). The Texas 1845-1849 shoreline and three league grant are delimited in *United States v. Louisiana, et al*, (Texas Boundary Case), 394 U.S. 1 (1969) and Supplemental Decree, 394 U.S. 836 (1969). Texas argues that the Congressional Resolution annexing Texas recognized that Texas had both a lateral and an offshore boundary, that the lateral boundary was established and that neither the jetties nor the Geneva Convention can affect an already existing lateral boundary.

VII. HISTORIC TITLE

Assuming that Article 12 applies, we need to consider the argument made by Texas in light of the second sentence of Article 12:

> "The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision."

The Texas argument is based upon its claimed "historical title." We shall hereafter consider "other special circumstances" which support the argument of the United States and Louisiana. It is the contention of

Texas that its lateral boundary in the Gulf of Mexico was established by the 1836 Act of the Republic of Texas, 1 Laws, Republic of Texas, 133, as modified by the Act of Congress admitting Texas into the Union in 1845,[12] 5 Stat. 797, and the 1848 Congressional Act, 9 Stat. 245, extending the Texas eastern boundary to include one-half of the Sabine. It should be noted here that the east boundary of Texas in 1836 was the west bank of the Sabine. Texas had no claim to the west half of the Sabine until the 1848 Act of Congress. These are matters which were considered by your Special Master in his first report and this Court has affirmed his conclusion that the geographic middle of the Sabine marks the boundary between the States of Texas and Louisiana. The Court concluded that it did not have to pass upon matters of prescription and acquiescence although your Special Master believed, and reported, that applying the law of prescription and acquiescence the geographic middle was the boundary between the two States.

The issue is whether the claimed statutory language actually describes a lateral maritime boundary. The 1836 Act provides: ". . . beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande . . . ." The problem is getting from the mouth of the Sabine to a point three leagues out in the Gulf. Texas argues that in the absence of clear statutory language and in the absence of illuminating legislative history, the boundary must be determined by reference to standards of domestic and international law extant in 1845/48, and how Congress would have intended that the eastern boundary of Texas be extended gulfward. The United States argues that ". . . lateral offshore bound-

[12] Texas has constructed a median line based on the historic coastline. (See Texas Exhibit DDD; Special Master's Exhibit).

aries simply do not exist until the process described in Article 12 is applied and a specific line is defined." United States post-trial reply brief, p. 6. The quoted language from the 1836 Act of the Republic of Texas simply does not describe or delimit any lateral boundary line from the mouth of the Sabine gulfward. No meridian is chosen, no angle of departure from the coast is referred to, nor is any point in the Gulf three leagues from land specified. Given the total lack of relevant language in the statute, there is no indication of how or where a lateral boundary was to be constructed. Statutory interpretation cannot supply missing words of such importance. Your Special Master concludes, and recommends, that the Court find that a lateral maritime boundary in the Gulf was not established in 1836 or in the period from 1845 to 1848 or thereafter.

The case of *United States v. Louisiana*, 363 U.S. 1 (1960), deserves study. How far a Special Master should go in commenting upon what was or was not decided by this Court in one of its opinions may be questionable. I think it proper, however, to mention that only Mr. Justice Douglas, Mr. Justice Brennan and Mr. Justice Stewart remain on the Court which decided this 1960 case. Mr. Justice Harlan, who wrote the majority opinion, made it clear that congressional attention surrounding the resolution approving the annexation of Texas was focused on the great political questions attending annexation, primarily slavery and possible war with Mexico "and the matter of boundary received little consideration except as it was related to larger issues" (P. 44). Later in the opinion it is stated:

> "For we are unable to find in the Congressional debates either on the 1844 Treaty or the 1845 Annexation Resolution a single instance of significant advertence to the problem of seaward boundaries." (47)

Still later the opinion states:

> "The foregoing circumstances make it abundantly plain that at the time Texas was admitted to the Union, its seaward boundary, though expressly claimed at three leagues in the 1836 Texas Boundary Act, had not been the subject of any specific concern in the train of events leading to annexation." (50)

Mr. Justice Black, concurring in part and dissenting in part, stated:

> "The opinion of Mr. Justice Douglas forcefully points out the difficulty, if not the impossibility, of finding that any of these States ever had a technical legal boundary out in the ocean. Even if a technical determination of boundaries were intended by Congress, rather than attempt that impossible task, I would prefer to return the Act to Congress for a more precise expression of its will." (90)

Mr. Justice Douglas dissenting in part, said:

> "The terms of the 1838 Convention do not support any such construction for, as I have said, that Convention fixed the boundary as extending 'from the mouth of the Sabine, where that river enters the Gulph of Mexico,' not 'three leagues' seaward of that point. To conclude, therefore, that the Treaty of Guadalupe Hidalgo was intended to fix the land and sea boundaries of Texas in accordance with the Texas Boundary Act of 1836 is to indulge in mental gymnastics beyond my capacities. * * *
>
> "While the 1838 Convention failed to include any seaward territory, a Joint Commission appointed to make the survey pursuant to the 1838 Convention actually marked the boundary between the United States and the Republic of Texas at the mouth of the Sabine River—not three leagues into the Gulf of Mexico." (102, 103)

Still later he stated:

> "Drawing the line 'to the Gulf of Mexico' is a far cry from drawing it to a point 'three leagues' from the shore."

Your Special Master concludes that most if not all of the members of the Supreme Court, whether in concurrence or in dissent, recogized that lateral boundaries were not being determined when Texas was admitted into the Union. If true, this justifies the position herein proposed by the Special Master that the lateral boundary be determined not on the basis of some inchoate line which no one had considered when Louisiana was admitted as a State or when Texas was admitted to the Union, but rather on the basis of the Geneva Convention rules insofar as applicable to the facts developed in this case.

Certain criticisms of the median line proposed by Texas based on its historic coastline were made by the opposing parties. Such a line would intersect the east jetty. Such a line would be more easterly than what Texas had claimed even under its "statutory" lateral boundary line. But of greater interest to the United States was the fact that the median line on Texas Exhibit DDD was not constructed on the basis of the actual 1845 coastline.

In order to construct a median line equidistant from the coastlines of the respective states, it is necessary to have sufficient segments of each state's coast represented on the map on which the median line is constructed. Regarding the Texas coastal segment of 1845 coastline, no problem arises since this segment has previously been adjudicated between Texas and the United States. However, the Louisiana historic coastline has never been determined. In order to obtain sufficient Louisiana historic coastline, the Texas experts extended the Louisiana coast based upon the trend of the coast (Transcript 845). Other problems with the median line are also present (See United States post-trial brief pp. 20-23). It is the conclusion of the Special Master that the median line on Texas DDD does have several techni-

cal defects which make the line inaccurate. It is also the case that such defects could be overcome. However, the median line proposed by Texas must be rejected not on the basis of the technical defects in the line's construction but because it is based upon a legal theory for which the Special Master cannot find support. There simply was no lateral boundary in 1845 in the Gulf.

While Texas has not formally proposed any of the other lines on the Special Master's Exhibit, a few words of explanation regarding each is in order. The median line using the present natural shorelines is constructed by Texas without the jetties. This line must be rejected as contrary to the Convention. It also produces an inequitable result. This line is discussed further in the section on "Special Circumstances."

The Texas statutory line must be rejected for the reasons outlined regarding the Louisiana statutory line. The Texas statutory line is an extension of the "thalweg" doctrine, as described in the testimony of Bascomb Giles, the Texas Land Commissioner in office at the time the line was created by Texas. Since the "thalweg" doctrine was rejected by your Special Master in his first report, and affirmed by this Court in that respect, it is clear that no extension of such a thalweg line is acceptable in this dispute.

VIII. SPECIAL CIRCUMSTANCES

The other exception to the rule under Article 12 is "other special circumstances." This was considered by A. L. Shalowitz, recognized by all of the parties as one of the great experts in matters relating to the law of the sea. His memorandums are dated March 10 and April 18, 1961 and are in evidence as part of Texas Exhibit YYY. They are directed to the Director of the U. S. Coast and Geodetic Survey, and were prepared for use in the litigation between the United States and Louisi-

ana. Your Special Master will not set forth the memorandums in full but will hereafter set forth and analyze relevant parts.

It should first be noted that the Shalowitz memorandums were not written for the purpose of determining lateral boundaries between states. They were written following the request of Solicitor General Cox by letter of March 6, 1961 that the U. S. Coast and Geodetic Survey furnish its expert advice and opinion as to the construction and measurement of the line marking the Louisiana grant under the Submerged Lands Act. Rear Admiral Karo, then Director of the Survey, replied on April 18, 1961 and attached to his reply a Shalowitz memorandum. As dicta his theory on interstate boundary was set forth. Shalowitz clearly saw the matter as one needing further study. He states: "There seems to be some question, however, as to where the actual interstate boundary runs after leaving the coast. For example, on U. S. Geological Survey Quadrangle Sabine Pass, published in 1957, the boundary is shown for a short distance as running between the jetties. This matter should be studied further."

The record in this case shows the memorandum to be in error when it states: "A true median line (considering the jetties as part of the coastline) would throw the interstate boundary far to the eastward of the jetties, to the great disadvantage of Louisiana."

The line proposed by the Solicitor General, and marked on the Special Master's Exhibit "U.S.", is a true median line constructed in accordance with Article 12. Reference to the Exhibit shows that it does not throw the interstate boundary far to the east of the jetties and is a line which, while not the line contended for by Louisiana, is not to its serious disadvantage.

That he was correct when he recognized that more study was needed is also shown when his list of sources on which he relied is examined. He makes no reference to the 1836 Act of the Republic of Texas or the Congressional Annexation Act, both of which are the foundation for the argument of Texas that a lateral boundary previously existed in the Gulf.

Shalowitz concludes that a justifiable boundary would result from drawing a median line without regard to the jetties but would still use the jetties to fix the "3-mile boundary of Louisiana." Presumably this meant using the jetties in constructing the Louisisana grant under the Submerged Lands Act, while ignoring the jetties for lateral boundary purposes. A median line using the modern coastline without the jetties produces the most easterly line of any. This is graphically shown by and was a reason for the Special Master's Exhibit. It seems inequitable on its face, and it is not offered by Texas as its proposed boundary line. Shalowitz in support of his conclusions argues that it can be reasoned that the lateral boundary existed before the jetties were built and that except by agreement the building of the jetties would not alter that boundary. This is the position urged by Texas. As discussed earlier in this report, such a previously existing lateral boundary has not been proven and your Special Master has concluded that the parties did not until about the time of this litigation urge such a claim. Shalowitz recognized that his proposal presented another problem, namely, that a median line constructed without reference to the jetties would sever the east jetty. Your Special Master hereafter discusses this problem and the International Law Commission suggestion by example that such a severance was a special circumstance to be avoided even at the cost of deviating from the equidistant principle.

Your Special Master concludes that the Shalowitz memorandum is not persuasive or binding under the facts and issues here presented insofar as it relates to the lateral boundary in the Gulf.

The existence of navigation channels in the area of a lateral boundary is an example of what the International Law Commission considered to be a special circumstance. The Commission also considered as a special circumstance a water boundary that might intersect a peninsula of land. Dr. Hodgson's testimony, transcript at p. 588, was to the effect that one of the advantages of the equidistant principle of Article 12 is that no severing of land forms would occur. Hodgson also pointed out that the term "special circumstances" has never been defined and is not defined in the Convention. He did state the following:

> "It is generally considered to be any physical or geographic feature which can result in an inequitable division of the seabed." p. 597.

Each state proposes a line that would sever the other's jetty (See Special Master's Exhibit). The International Law Commission example of a land form severed by a water boundary was a special circumstance to be avoided, even at the cost of deviating from the equidistant principle. Extending the lateral boundary through the jetties (which is a navigation channel) not only allows the equidistant principle to be applied without interruption but also prevents the severing of either jetty by a boundary line.

The use of the Texas 1845-1848 coastline creates a median line that would sever the east jetty. Texas points out that Texas uses its historic 1845-1848 coastline to measure out three leagues under the Submerged Lands Act and that Louisiana uses the east jetty to measure out three geographic miles. It follows, Texas argues,

that if Article 12 of the Geneva Convention were literally applied using these two references that the resulting median line would run in the direction of Galveston, Texas. Such a line would be clearly inequitable. Texas concludes that both jetties must therefore be disregarded.

Texas is correct in its assertion that the use of one jetty would be inequitable in determining the lateral boundary. However, the argument that a literal application of Article 12 produces an inequitable result is not correct.

Texas premises its argument on the assumption that its 1845-1848 coastline would be employed in an application of Article 12. This is not the case. Article 12 defines the median line as a line "every point of which is equidistant from the nearest points on the *baselines from which the breadth of the territorial seas of each of the two states is measured.*" (emphasis added) Texas equates its historic coastline of 1845-1848 with the baseline referred to in Article 12, and asserts its three league grant is the "Texas territorial sea."

As noted above, the baseline of Article 12 is the modern, ambulatory coastline, not an historic coastline. The three league area grant to Texas under the Submerged Lands Act gave Texas certain rights in the area but did not create a "territorial sea." Only the United States has a territorial sea,[13] and it is measured from the Convention coastline, including the jetties. The Submerged Lands Act historic boundary grant to Texas did not create a different baseline for Texas, as pointed out by this Court in its decision regarding the § 2(b) limita-

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[13] "As an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States." *United States v. Texas*, 339 U.S. 707, 718 (1950).

tion on the Texas grant, which is measured from the modern, ambulatory Convention coastline. As stated by this Court in the second California case, the Geneva Convention ". . . establishes a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations. . . ." *United States v. California*, 381 U.S. 139, 165 (1964). Your Special Master is reluctant to recommend that Texas has two baselines, one for Submerged Lands Act purposes and another for lateral boundary purposes.

The Texas argument that a literal application of the Convention produces inequity is not persuasive. To comply with the Convention and to do equity both jetties must be included as part of the baseline. To the extent the jetties are special circumstances in this case, they are to be included rather than ignored.

The Special Master concludes that the position of the United States is a sound one, namely, that the jetties should be used in determining the boundary since both jetties are part of the coast under Article 8 and their use is not inequitable.

IX. ARTICLE 13

As previously discussed, the Sabine River flows through the jetties into the Gulf of Mexico. Both the river and the jetties are items of significance under the Geneva Convention.

Article 13 of the Geneva Convention on the Territorial Sea and Contiguous Zone provides as follows: "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks." This article of the Convention was not fully developed by the parties in the written briefs but was mentioned in connection

with certain evidence presented at the New Orleans hearing. Because of its apparent application to the facts of this case, an analysis of the role of Article 13 in this dispute is required of your Special Master.

The issue in question is the determination of the proper baseline from which the lateral boundary is to be constructed, applying the Shalowitz principle of a median line as set forth in Article 12.

As already pointed out above, the second California case held that the "coastline" of the Submerged Lands Act and the "baseline" of the Geneva Convention is the same line. *United States v. California*, 381 U.S. 139, 164-165 (1965). Article 3 of the Convention provides that the "normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast" as pointed out by Dr. Hodgson's testimony, *supra*. Article 3 also notes that the low-water line is the baseline "except where otherwise provided in these articles . . ." and these exceptions were also covered in Dr. Hodgson's testimony, *supra*. Article 8 provides that "harbour works", such as the jetties, "shall be regarded as forming part of the coast." Thus, in applying Article 12, the jetties are part of the coast as held in *United States v. Louisiana*, 394 U.S. 11 (1969). However, we have here not only harbor works in the form of jetties, but also a river entering the sea. Article 13 would require the baseline to be a "straight line across the mouth of the river between points on the low-tide line of its banks." Depending on where such a "low-tide line" were established, it could turn out that a baseline constructed following Article 13 would exclude the jetties as part of the coastline. For this to happen the straight line would have to be drawn across the natural mouth of the Sabine. Such an exclusion would contravene Article 8. It is of note that no evidence was introduced by the parties

regarding such an Article 13 "low-tide line" except for U. S. Exhibit AAAA.

U. S. Exhibit AAAA indicates the low-tide line by areas marked in blue versus areas marked in white. [Note: The exhibit colors seem to your Special Master to be blue versus white, but Dr. Hodgson testified the colors were green and yellow. Transcript at p. 749.] The map shows that the jetties have been built, either by design or happenstance, to extend to the low-tide line. Such a low tide line would not create a conflict between Articles 8 and 13, since this low-tide line, as shown on U. S. Exhibit AAAA, would indicate a closing line at the terminus of the jetties even under Article 13. A conflict between Articles 8 and 13 exists only if Article 13 is read to require a straight line across the *natural* mouth of the river on the low-tide line of its banks, "banks" being interpreted to exclude the jetties. Such a conflicting interpretation of Articles 8 and 13 need not be reached in this case since it is the belief of your Special Master, for the reasons set out following, that the jetties must be included as part of the baseline, whether in harmony or in conflict with Article 13. However, U. S. Exhibit AAAA does provide an Article 13 low-tide line which is in consonance with Article 8 in that the jetties are included rather than excluded from a determination of the baseline.

It is the belief of your Special Master that the case law generated by the Submerged Lands Act requires that the baseline used to construct the lateral boundary in this case include the jetties pursuant to Articles 8 and 12. Moreover there is expert testimony which would support a finding that the mouth of the river is at the terminus of the jetties. The expert testimony was offered by Dr. Hodgson (p. 529 of Transcript). Prescription and acquiescence evidence also indicates that the geographic middle of the jetty channel marks the lateral

boundary. Furthermore, a lateral boundary line drawn using the modern coast with a baseline including a closing line across the river at the head of the jetties would produce an inequitable division of the seabed granted to the states. Such a line would be the most easterly of any proposed. Such a line is far to the east of even the Texas statutory line, and is also east of the line argued for by Texas as its primary contention.

The Special Master concludes that the baseline should include the jetties of Texas and Louisiana. Any construction of Article 13 which requires the baseline to include a closing line at the head of the jetties, rather than at the terminus, is rejected. The Convention (Articles 3, 8 and 12), the case law, and equity require this conclusion.

X. SUMMARY OF RECOMMENDATIONS

In summary, and without repeating in detail the recommendations of your Special Master contained herein, your Special Master has concluded and recommends:

1) That the boundary between the States of Texas and Louisiana from 32° to 30° north latitude be established as shown upon Texas Exhibit AAA 1-12, pursuant to agreement of the parties.

2) That the boundary line from 30° north latitude to the Gulf of Mexico and to the terminus of the jetties be established as being the median line marked on Louisiana Exhibits DDD and III and hereinabove described specifically, with the right to the States of Texas and Louisiana to alter such boundary within Sabine Lake by agreement within the time proposed.

3) That the claim of the United States of America to an island named "Sam" be denied.

4) That the lateral boundary in the Gulf of Mexico between the States of Texas and Louisiana and between the State of Texas and the United States of America be established as the line shown on your Special Master's Exhibit and marked "U.S."

5) That the cost be taxed to the parties in accordance with their contribution to the fund established by your Special Master and deposited in the First National Bank & Trust Company, Lincoln, Nebraska; that no costs be taxed for the services of your Special Master herein; that upon the order of termination of this case your Special Master file a report setting forth the amount of money received by him from the parties for the payment of costs and expenses pursuant to his requests and of the disbursement thereof for approval by the Court unless prior thereto the parties in writing have approved your Special Master's report as to the disbursement of said moneys.

Respectfully submitted,

ROBERT VAN PELT
Special Master

XI. APPENDICES

Appendix A

Special Masters Exhibit

(See Map Following)

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE FOLDOUT NO 1

Appendix B

NOTE: By agreement of the parties all exhibits in evidence from the prior hearing are in evidence for the purposes of this report. Prior exhibits are identified in the appendix to the first report.

List of United States Exhibits

U.S. Ex. No.	*Description*
DDD	U.S. Geological Survey Map, "Port Arthur South", 7½-minute quadrangle map, 1957, revised 1970
EEE	U.S.C. & G.S. Chart, "Hydrography of Sabine Pass and Lake, La. and Tex." 1885
FFF	U.S.C. & G.S. Chart No. 517 "Sabine Pass and Lake", March 1906
GGG	Corps of Engineers, "Map of Sabine-Neches Canal, Texas", January 1910
HHH	U.S.C. & G.S. Chart No. 517, "Sabine Pass and Lake", June 1911
III	U.S. Geological Survey Map, "Port Arthur South", 15-minute quadrangle map, 1943, revised 1957
JJJ	Portion of the "Map of the River Sabine" 1840, showing the entrance of the Sabine River into Sabine Lake, Sabine Lake, Sabine Pass, and three islands on the west shore of Sabine Lake
KKK	U.S.C. & G.S. Chart No. 517, "Sabine Pass and Lake", July 1916
LLL	A. Sugg and L. Pardue, *Memorable Hurricanes of the United States Since 1873*, NOAA Technical Memorandum NWS SR 56 (April 1971), pp. 1 to 24
MMM	U.S.C. & G.S. Chart No. 1279, 17th edition, entitled "United States-Gulf Coast, Louisiana-Texas, Calcasieu Pass to Sabine Pass. Drawn on this chart is the United States' contention as to the location of the lateral boundary which divides the rights of

Appendix

U.S. Ex. No.	*Description*
	Texas, Louisiana and the United States in the resources of the continental shelf in the Gulf of Mexico and Texas and Louisiana contentions
NNN	Six of a set of 155 maps depicting the outer limits of the territorial sea and contiguous zone of the United States and lines marking the outer limits of inland waters where those lines are material to the delimitation of the territorial sea
OOO	Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 1) pp. 1608-1614; T.I.A.S. 5539
PPP	Convention on the Continental Shelf, 15 U.S.T. 471; T.I.A.S. 5578
QQQ	Fourteen volumes of a set entitled "International Boundary Study, Series A, Limits in the Seas," issued by the Geographer, Department of State, Washington, D.C.
RRR	Treaty Between the United States and Great Britain, Boundary Line in Passamaquoddy Bay. Treaty Series Number 551
SSS	Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River As the International Boundary, 23 U.S.T. 371; T.I.A.S. 7313
TTT	Memorandum written by Robert D. Hodgson, entitled "Procedures for the Creation of a Boundary for the Maritime Zone Between Mexico and the United States in the Gulf of Mexico," with enclosure
UUU	Stipulation Between the United States and the State of Texas Regarding the Historic Coast Line and Boundary of Texas. July 15, 1968
VVV	A reduced scale copy of Map Number 1 of a set of 47 which maps depict the historic coastline of Texas as agreed to by the State of Texas and the United States

U.S. Ex. No.	*Description*
WWW	U.S.C. & G.S. Chart No. 1116, 29th edition, entitled United States-Gulf Coast, Mississippi River to Galveston. Drawn on this chart are illustrations of the lateral boundary contentions of the United States
XXX	A reduced scale copy of Map Number 47 of a set of 47 maps which depict the historic coastline of Texas as agreed to by Texas and the United States
YYY	Affidavit of Joseph T. Long
ZZZ	Definition of the term "River" from standard geographic sources
AAAA	U.S.C. & G.S. Chart 517, 28th edition 1973
BBBB	Report of Albert B. Maris, Special Master in *United States* v. *Florida*, No. 52, Original
CCCC	Transparent reproduction of a portion of U.S.C. & G.S. Chart 517 dated June 1911 and entitled "Sabine Pass and Lake"
EEEE	Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, February 2, 1848
JJJJ	Moore, International Arbitrations, Vol. I, pp. 233-236 and 471-473
WWWW	Affidavit of Davis, Corps of Engineers, explaining Port Arthur Exhibits AAA 1 and 2
XXXX	Deposition of Joseph T. Long
AAAAA*	U.S.C. & G.S. Chart No. 203, "Coast of Texas from Sabine Pass Westward to High Island", May 1899
BBBBB*	U.S.C. & G.S. Chart No. 203, "Coast of Texas from Sabine Pass Westward to High Island", June 1901

* Exhibits constituting new evidence introduced by the United States pursuant to written motion.

Appendix

U.S. Ex. No.	*Description*
CCCCC, 1-2*	Chart history of U.S.C. & G.S. Chart No. 203, "Coast of Texas from Sabine Pass Westward to High Island", October 1900 (2 sheets)
DDDDD*	Chart history of U.S.C. & G.S. Chart No. 203, "Coast of Texas from Sabine Pass Westward to High Island", May 1899
EEEEE, 1-2*	Chart History of U.S.C. & G.S. Chart No. 517, "Sabine Pass and Lake", January 1901 (2 sheets)
FFFFF, 1-2*	Chart history of U.S.C. & G.S. Chart No. 203, "Coast of Texas from Sabine Pass Westward to High Island", June 1901 (2 sheets)
GGGGG 1*	Affidavit of Herbert W. Burgoyne
GGGGG 2*	Certificate of Herbert W. Burgoyne

Documents for Judicial Notice Offered by the United States

FFFF	Black's Law Dictionary, Revised 4th Ed. 1968, p. 1491.
GGGG	Act of May 22, 1953, 67 Stat. 29.
HHHH	Treaty with Great Britain, June 15, 1846, 9 Stat. 869.
IIII	Malloy, Treaties, Conventions, International Acts, Protocols and Agreements, 1776-1909.
$IIII_1$	Definitive Treaty of Peace, 1783, United States and Great Britain, I Malloy 586.
$IIII_2$	Reciprocity Treaty as to Fisheries, Duties and Navigation British North America, June 5, 1854, I Malloy 668.
$IIII_3$	Treaty of Washington, May 8, 1871, I Malloy 700.

* Exhibits constituting new evidence introduced by the United States pursuant to written motion.

U.S. Ex. No.	*Description*
JJJJ$_1$	Moore, International Arbitrations, Vol. 1, pp. 233-236 and 471-473.
JJJJ$_2$	Map of the river Buctouche from the United States/ Great Britain Reserved Fisheries arbitrations.
KKKK	W. L. Griffin, Delimitation of Ocean Space Boundaries Between Adjacent Coastal States of the United States, Proceedings of the Third Annual Conference of the Law of the Sea Institute, June 24-27, 1968, pp. 142-155.
LLLL	A. L. Shalowitz, Shore and Sea Boundaries, Vol. 1, pp. 230-235, 244-245.
MMM	Treaty with Mexico, December 30, 1853, 10 Stat. 1031.
NNNN	Whiteman, Digest of International Law, Vol. 4, pp. 323-335.
OOOO	Yearbook of the International Law Commission, Vol. II, 1956; A/CN.4/SER.A/1956/ADD. 1, November 1956, p. 272.
PPPP	North Sea Continental Shelf Cases, selected pages from the opinion of the International Court of Justice, 20 February 1969, pp. 23-26.
QQQQ	International Court of Justice Yearbook, 1968-1969, pp. 100-108.
RRRR	A. F. Ryan, The Offshore Boundaries of the State of Rhode Island, 1972.
SSSS$_1$	Richard Young, "The International Law Commission and the Continental Shelf," The American Journal of International Law (1952), Vol. 46, pp. 123-128.
SSSS$_2$	Richard Young, "Lord Asquith and the Continental Shelf," The American Journal of International Law (1952), Vol. 46, pp. 512-515.

Appendix

U.S. Ex. No.	*Description*
TTTT	Richard Young, "The Geneva Convention on the Continental Shelf: "A First Impression," The American Journal of International Law (1958), Vol. 52, pp. 733-738.
UUUU	Richard Young, "Offshore Claims and Problems in the North Sea," The American Journal of International Law, (1965) Vol. 59, pp. 505-522.
VVVV	Richard Young, "Equitable Solutions for Offshore Boundaries: The 1963 Saudi Arabia-Iran Agreement," The American Journal of International Law (1970) Vol. 64, pp. 152-157.

List of City of Port Arthur Exhibits

City of Port Arthur Ex. No.	*Description*
AAA 1-2	Two sheets No. 1 and 2 of a Sabine-Neches Waterway right-of-way map of the U. S. Engineers Office, Galveston, Texas, dated 11/19/37.
BBB 1-4	Four aerial photographic maps of Pleasure Island and the Sabine-Neches Ship Channel, dated 11/21/71, and being designated Sheets No. 18, 19, 37, and 38, with superimposed Pleasure Island boundary from U. S. Exhibit DDD.
CCC	Affidavit of Carroll Holt.

Texas Exhibits

"AAA" — Pages 1-12—Maps relating to the agreement between Texas and Louisiana concerning the river boundary line north of Sabine Lake. The plats representing the surveys are officially identified as follows:

AAA-1 — Center Quad. (1958 Ed., photo rev. 1969)

AAA-2 — Logansport Quad. (1956 Ed., photo rev. 1969)

AAA-3 — Patroon Quad. (1956 Ed., photo rev. 1969)

AAA-4 — Zwolle Quad. (1957 Ed., photo rev. 1969)

AAA-5 — Negreet Quad. (1954 Ed., photo rev. 1969)

AAA-6 — Wiergate Quad. (1954 Ed., photo rev. 1969)

AAA-7 — Merryville Quad. (1959 Ed.)

AAA-8 — Bon Wier Quad. (1959 Ed.)

AAA-9 — Starks Quad. (1959 Ed., photo rev. 1967)

AAA-10 — Bessmay Quad. (1955 Ed.)

AAA-11 — Orange Quad. (1960 Ed.)

AAA-12 — Orangefield Quad (1957 Ed.)

"DDD" — Reproduction of U.S. Coast and Geodetic Survey Map No. 47 of 47 showing various lines projected into the Gulf.

"DDD-1" — Overlay showing present shoreline.

"DDD-2" — Overlay showing Texas statutory line.

"DDD-3" — Overlay showing contention of U.S., a perpendicular bisector from the end of the jetties.

"FFF" — Copy of a report of the Chief of Engineers of the results of the survey of the entrance to Sabine Pass, Texas, dated March 29, 1882.

"GGG" — Map of Texas Gulf Coast, showing lease blocks, with lands leased by Texas in disputed area marked out in black.

"HHH" — Map of Texas Gulf Coast with leases indicated in green.

"III" — Affidavit of Lewis M. Morris.

"III-1" — Deposition of Lewis M. Morris.

"JJJ" — Affidavit of Tom Ellis.

"JJJ-1" — Deposition of Tom Ellis.

"KKK" — Affidavit of Carlyle J. Plummer.

"KKK-1" — Deposition of Carlyle J. Plummer.

"LLL" — Affidavit of Lewis Alexander.

"LLL-1" — Deposition of Lewis M. Alexander.

"LLL-2" — Reduced copy of Texas Exhibit "DDD", furnished to Louisiana.

"MMM" — A bibliography of Richard Young.

"NNN" — Affidavit of J. Bascom Giles.

"OOO" — Affidavit of Martin Verboon.

"PPP" — Affidavit of Robert LeBlanc.

"QQQ" — Affidavit of A. A. DeLee.

"RRR" — A 1900 U.S. and Geodetic Survey Map.

"SSS" — A 1959 Game and Fish Commission map which was produced by the Parks & Wildlife.

"TTT" — Affidavit of Carl Peyton Covert.

"UUU" — Copy of 1947 Texas Statute, Article 5415a, Vernon's Texas Civil Statutes.

"WWW" — Copy of 1 Laws, Republic of Texas, 133; 1836 boundary statute.

"XXX" — Base map "Sabine-Neches Waterway, Texas" prepared by U. S. Corps of Engineers in 1938 showing ends of jetties at various points in time, with overlays showing simulated median lines.

"YYY" — Solicitor General of United States letter dated March 6, 1961, signed by Archibald Cox, addressed to Rear Admiral H. Arnold Karo, Director, Coast & Geodetic Survey in Washington, with attached memorandum from Mr. Clement.

Louisiana Exhibits

LA. EXHIBIT AAA 1-3

1. Act No. 55 of the 1938 Regular Session of the Louisiana Legislature
2. Act No. 32 of the 1954 Regular Session of the Louisiana Legislature
3. Act No. 33 of the 1954 Regular Session of the Louisiana Legislature

LA. EXHIBIT BBB

(La. Item 44)

Louisiana Department of Public Works map showing the boundary between Texas and Louisiana in the Sabine as contended by Louisiana from the 30th degree of north latitude south to the gulfward extension of the Sabine as the boundary between Texas and Louisiana.

LA. EXHIBIT CCC

(La. Item 104)

Louisiana Department of Public Works map showing proper coordinates for end of Sabine jetties.

LA. EXHIBIT DDD

Corrected La. Item 104 per 30° N - South

LA. EXHIBIT EEE 1-21
(La. Items 1-21)

1. Map of the River Sabine from its mouth on the Gulf of Mexico in the Sea to Logan's Ferry (Surveyed in 1840)
2. Swamp Selection List dated June 11, 1929, covering Lots 1, 2 and 3 of Section 36, Township 12 South, Range 15 West, Louisiana Meridian.
3. Swamp Approval List No. 229 covering Lots 1, 2, and 3 of Section 36, Township 12 South, Range 15 West, Louisiana Meridian.
4. Government survey plat approved December 18, 1850, covering lands in Township 12 South, Ranges 14 and 15 West, Louisiana Meridian.
5. United States tract book record covering Section 36, Township 12 South, Range 15 West, Louisiana Meridian.
6. Louisiana tract book record covering Section 36, Township 12 South, Range 15 West, Louisiana Meridian.
7. Swamp Selection List dated October 30, 1850 covering Section 31, Township 12 South, Range 14 West; Section 6, Township 13 South, Range 14 West; and Section 1, Township 13 South, Range 15 West.
8. Swamp Approval List No. 1, Opelousas, covering Section 31, Township 12 South, Range 14 West; Section 6, Township 13 South, Range 14 West; and Section 1, Township 13 South, Range 15 West.
9. United States tract book covering Section 31, Township 12 South, Range 14 West, Louisiana Meridian.
10. Louisiana tract book covering Section 31, Township 12 South, Range 14 West, Louisiana Meridian.
11. Government survey plat approved April 23, 1851, covering lands in Township 13 South, Ranges 14 and 15 West, Louisiana Meridian.

12. United States tract book record covering Section 1, Township 13 South, Range 15 West, Louisiana Meridian.
13. Louisiana tract book record covering Section 1, Township 13 South, Range 15 West, Louisiana Meridian.
14. Louisiana Patent No. 7712 to Robert H. Jackson of Section 31, Township 12 South, Range 14 West; Section 36, Township 12 South, Range 15 West; and Section 1, Township 13 South, Range 15 West, Louisiana Meridian.
15. United States tract book record covering Section 6, Township 13 South, Range 14 West, Louisiana Meridian.
16. Louisiana Tract book record covering Section 6, Township 13 South, Range 14 West, Louisiana Meridian.
17. Louisiana Patent No. 7522 to Henry B. Firce of Section 6, Township 13 South, Range 14 West, Louisiana Meridian.
18. Map of Sabine-Neches Waterway, Texas, dated August, 1944, being Plat No. 4 of House Document No. 571, 79th Congress, 2d Session (numbered Louisiana's Item No. 31).
19. Deed dated May 23, 1912, from John C. Tracy and D. Cox to the United States of America of lands in Cameron Parish, Louisiana, being more particularly described as lands in Section 36, Township 12 South, Range 15 West and Section 1, Township 13 South, Range 15 West, Louisiana Meridian.
20. Affidavit of Honorable Leslie Richard, Tax Assessor for Cameron Parish, Louisiana.
21. Affidavit of Honorable Claude Eagleson, Sheriff and Ex-Officic Tax Collector for Cameron Parish, Louisiana.

LA. EXHIBIT FFF House Document 634

LA. EXHIBIT FFF-1 Plat Attached to House Document 634

LA. EXHIBIT GGG
(La. Item 43)

U. S. Coast and Geodetic Survey Map. No. 517, Sabine Pass and Lake, Louisiana and Texas, based on Corps of Engineers surveys from 1874 to June, 1900.

LA. EXHIBIT HHH

House Document No. 571, 79th Congress, 2d Session (Sabine-Neches Waterway, Texas), Letter from the Secretary of War transmitting a letter from the Chief of Engineers, United States Army, dated September 17, 1945, submitting a report, together with accompanying papers and illustrations (including Louisiana Item 18), on a review of reports on Sabine-Neches Waterway, Texas.

LA. OFFERS U. S. KKK

U.S.C. & G. S. Chart No. 517, "Sabine Pass and Lake", July, 1916

LA. EXHIBIT III
(La. Item 45)

Louisiana Department of Public Works map showing the boundary between Texas and Louisiana as contended by Louisiana from the 30th degree of north latitude south to the gulfward extension of the Sabine as the boundary between Texas and Louisiana which reflects Texas' contended boundary in Sabine Lake and Pass.

LA. EXHIBIT JJJ
(La. Item 46)

Map No. 41 of 41 of a series numbered from east to west, Louisiana coast, prepared by the Coast and Geodetic Survey for the Bureau of Land Management and the State of Louisiana to show the approximate mean low water line along the Gulf Coast as interpolated and compiled from aerial photographs taken by Jack Ammann Corporation, January, 1954, on which is shown Louisiana's principal and alternative contentions as to the gulfward boundary between Texas and Louisiana.

LA. EXHIBIT KKK
(La. Item 48)

Map No. 41 of 41 of a series numbered from east to west, Louisiana coast, prepared by the Coast and Geodetic Survey for the Bureau of Land Management and the State

of Louisiana to show the approximate mean low water line along the Gulf Coast as interpolated and compiled from aerial photographs taken by Jack Ammann Corporation January, 1954, showing Louisiana's alternative line from the midpoint of Sabine Pass true south.

LA. EXHIBIT LLL
(La. Item 49)

Map No. 41 of 41 of a series numbered from east to west, Louisiana coast, prepared by the Coast and Geodetic Survey for the Bureau of Land Management and the State of Louisiana to show the approximate mean low water line along the Gulf Coast as interpolated and compiled from aerial photographs taken by Jack Ammann Corporation January, 1954, showing Louisiana's alternate line being a line projected through the center of the jetties (as an extension of the Sabine) south 11 degrees 31 minutes 26.4 seconds east.

LA. EXHIBIT MMM
(La. Item 50)

Blank copy of Map No. 41 of 41 of a series numbered from east to west, Louisiana coast, prepared by the Coast and Geodetic Survey for the Bureau of Land Management and the State of Louisiana to show the approximate mean low water line along the Gulf Coast as interpolated and compiled from aerial photographs taken by Jack Ammann Corporation January, 1954.

LA. EXHIBIT NNN
(La. Item 87)

Texas General Land Office County Boundary Map dated September 22, 1953, prepared pursuant to Chapter 287, Acts of the 50th Legislature, 1947.

LA. EXHIBIT OOO
(La. Item 51)

Coast and Geodetic Survey Maps (Rollover Bayou to Calcasieu Pass, United - Gulf Coast - Louisiana; Calcasieu Pass to Sabine Pass, United States, Gulf Coast - Louisiana - Texas; and Sabine Bank to East Bay, including Healed Bank, United States-Gulf Coast, Texas) attached and prepared by Louisiana Department of Public Works to reflect the trend of the coastline where the Calcasieu and Sabine

Rivers flow into the Gulf of Mexico and to show a projected line gulfward.

LA. EXHIBIT PPP
(La. Item 103)

Horizontal Control Data series published and printed by the United States Department of Commerce, Coast and Geodetic Survey, Washington, D. C., in October, 1966, which reflects that, as early as 1923, the Coast and Geodetic Survey considered Sabine Pass east jetty as part of the State of Louisiana.

LA. EXHIBIT QQQ (1-20)
(La. Items 54-73)

1. United States River and Harbor Works performed by U. S. Army Engineer District, Galveston, Corps of Engineers.
2. Report of the Chief of Engineers of 1875.
3. Appendix O to the Chief of Engineers Report of 1883, with other documents relating to the works. (Improvement of Sabine Pass and Blue Buck Bar, and of Sabine and Neches Rivers.)
4. Report of the Chief of Engineers, U. S. Army; Report of Major Adams of 1900, Vol. 1, relative to improvement of mouths of Sabine and Neches Rivers, Texas, etc.
5. Report of the Chief of Engineers, U. S. Army of 1900, Vol. II, relative to re-examination of the proposed channel through Sabine Lake, Texas and Louisiana.
6. Report of the Chief of Engineers, 1901, Harbor at Sabine Pass, Texas.
7. Report of the Chief of Engineers, 1901, Appendix T, Improvement of Mouths of Sabine and Neches Rivers, Texas, etc.
8. Report of the Chief of Engineers, 1915, Harbor at Sabine Pass and Port Arthur Canal, etc.
9. Report of the Chief of Engineers, 1915, Vol. I, Mouths of Sabine and Neches Rivers, Texas, etc.
10. Report of the Chief of Engineers, 1915, Vol. II, Mouths of Sabine and Neches Rivers, Texas, etc.

11. Report of the Chief of Engineers, 1916, Vol. I, Mouths of Sabine and Neches Rivers, Texas, etc.
12. Report of the Chief of Engineers, 1916, Vol. II, Mouths of Sabine and Neches Rivers, Texas, etc.
13. Report of Chief of Engineers, 1926, Rivers and Harbors, Galveston, Texas District, etc.
14. Report of Chief of Engineers, 1929, Improvements of Rivers and Harbors in the Galveston, Texas, District, etc.
15. Report of the Chief of Engineers of 1930, Improvement of Rivers and Harbors in the Galveston, Texas District, etc.
16. Report of Chief of Engineers, 1940, Sabine-Neches Waterway, Texas, etc.
17. Report of Chief of Engineers, 1950, Improvements of Rivers and Harbors in the Galveston, Texas, District, etc.
18. Report of Chief of Engineers, 1960, Sabine-Neches Waterway, Texas, etc.
19. Report of Chief of Engineers, 1970, Sabine-Neches Waterway, Texas, etc.
20. Report of Chief of Engineers, 1971, Sabine-Neches Waterway, Texas, etc.

LA. EXHIBIT RRR-1. (1-8)
(La. Items 74-81)

1. Copy of letter of April 10, 1974, from Weldon M. Gamel, Chief, Constructions-Operations Division, Department of the Army, Galveston, District, Corps of Engineers, to Mr. Roy Aguillard, Director of the Louisiana Department of Public Works, to which is attached a permit dated June 29, 1942, issued to the Federal Public Housing Authority, which permit was acquired for the purpose of dredging the Sabine River and adjacent area at Orange, Texas, to provide fill for public housing on the Texas side of the River.
2. Sheet No. 21 of 21 of Survey Gulf to Beaumont and Orange, Texas, 1912, showing the dredged turning basin south of Orange, Texas, and a portion of the Sabine River East of Orange, Texas, prior to widening.
3. Survey by F. Shutts, Civil Engineer, made during the period May 18, through 27, 1911, entitled "Teutonic

Land and Development Company Holdings located in Township 11 South, Ranges 12 and 13 West.

4. Survey by F. Shutts' Sons from March to September, 1950, entitled "The Ohio Oil Company Survey of Township 11 South, Range 13 West, Calcasieu Parish, Louisiana.", which survey map shows the left bank of the Sabine River opposite Orange, Texas as it appeared before and after widening.
5. Clear film enlargement to scale 1/24,000 of Phoenix Lake 1932 quadrangle, previously filed in evidence as Texas' Exhibit A-7.
6. Copy of the Orange, Louisiana-Texas quadrangle scale 1/24,000, dated 1960 photo-revised 1970, which covers same area used to compare the location of the middle of the Sabine River before and after dredging.
7. Clear film of Orange, Texas quadrangle dated 1926, scale 1/62,500 made for Texas Board of State Water Engineers.
8. Copy of Orange, Louisiana-Texas Quadrangle dated 1960 scale 1/62,500, previously filed in evidence as Texas' Exhibit AAA-11, which Mr. Hatley Harrison submitted to Texas showing the correct location of the middle of the Sabine River.

L.A. EXHIBIT SSS Lease Block Map - 1947

LA. EXHIBIT TTT (1-2)
(Same as sub Tex HHH - May 1, 1974 list)

LA. EXHIBIT UUU
(La. Item 52)

Louisiana State Mineral Board Lease Block Map of 1947, West Cameron Area (base map from U. S. Coast and Geodetic Survey Charts Nos. 1278 and 1279), showing Louisiana oil, gas and mineral leases within area of contention as to gulfward boundary between Texas and Louisiana.

LA. EXHIBIT UUU-1
(La. Item 81)

(a) State Lease No. 783, dated September 12, 1946.
(b) Copy of Plat
(c) Copy of Release

(d) Copy of map covering West Cameron area and certification of publication of same dated August 12, 1946.

(e) Copy of correspondence dated March 14, 1958 and February 7, 1958, relative to State Lease No. 783.

(f) Copy of application dated July 19, 1946, from the Superior Oil Company along with list of checks and map of West Cameron Area.

(g) Copy of correspondence relative to notices for publications relative to State Lease No. 783.

(h) Copy of correspondence dated January 4, 1954.

(i) Copy of correspondence dated August 22, 1952, from Stanolind Oil & Gas Company relative to annual rental payments on State Leases including State Lease No. 783.

(j) Copy of rental payment vouchers.

(k) Copy of instrument consenting to the payment of certain rents, royalties, etc., dated August 4, 1953, resolution of same date authorizing execution of said instrument and instrument dated June 5, 1950, relative to State Lease No. 783.

(l) Copy of list of Oil and Gas Mineral Leases dated August 6, 1953, relative to State Lease No. 783.

LA. EXHIBIT UUU-2
(La. Item 83)

(a) State Lease No. 785, dated September 12, 1946.

(b) Copy of plat

(c) Copy of application from the Superior Oil Company dated July 19, 1946, along with plat mentioned in said application relative to State Lease No. 785.

(d) Copy of bid from Stanolind Oil & Gas Company dated August 10, 1946, relative to State Lease No. 785.

(e) Copy of rental payment voucher from Stanolind Oil & Gas Company for the 12-month period beginning September 12, 1947.

(f) Copy of rental payment voucher from Stanolind Oil & Gas Company for the 12-month period beginning September 12, 1948.

(g) Copy of release of Oil and Gas Lease No. 785 dated April 25, 1950.

LA. EXHIBIT UUU-3
(La. Item 84)

(a) State Lease No. 3838, dated April 23, 1962.

(b) Copy of plat of Tract 8104, West Cameron Area, Gulf of Mexico.

(c) Copy of bid dated April 9, 1962, by Ocean Drilling & Exploration Co. submitted on Tract 8104.

(d) Copy of release of State Lease 3838, Tract 8104, dated May 13, 1963.

(e) Copy of letter dated June 7, 1963, from Ocean Drilling & Exploration Co., relating to Lease No. 3838.

LA. EXHIBIT UUU-4
(La. Item 85)

(a) State Lease No. 4290, dated February 24, 1964.

(b) Copy of plat

(c) Bid submitted by the California Co., dated February 20, 1964.

(d) Annual Rental payments for years 1965, 1966 and 1967.

(e) Letter agreement covering Interim Plan of Production West Cameron Block 49, from Chevron Oil Company, dated February 10, 1947.

(f) Document of cancellation dated March 4, 1968, from Chevron Oil Company.

LA. EXHIBIT UUU-5
(La. Item 86)

(a) State Lease No. 4291, dated February 24, 1964.

(b) Copy of plat.

(c) Copy of portion of plat of West Cameron area showing, among others, Tract No. 9078.

(d) Copy of oil division order covering State Lease No. 4291, first run, approved September 15, 1964.

(e) Copy of bid dated February 20, 1964, submitted by the California Company.

(f) Copy of documents relative to Lieu Royalty payments made in 1965 by the California Company pertaining to State Lease No. 4291.

(g) Copy of documents relative to Lieu Royalty payments made in 1965 by Chevron Oil Company pertaining to State Lease No. 4291.

(h) Copy of documents relative to payments pertaining to the State Lease No. 4291 along with correspondence referring to same.

(i) Copy of documents relative to Lieu Royalty payments by Chevron Oil Company 1966-1967, pertaining to State Lease No. 4291.

(j) Copy of documents relative to Lieu Royalty payments made by Chevron Oil Company 1966-1967, pertaining to State Lease No. 4291.

(k) Copy of resolution relative to the development of State Lease No. 4291 adopted at a meeting of the State Mineral Board October 8, 1969.

(l) Copy of resolution relative to State Lease No. 4291 adopted at a meeting of the State Mineral Board January 14, 1970.

(m) Copy of partial release pertaining to State Lease No. 4291, approved January 14, 1970.

LA. EXHIBIT VVV
(La. Item 33)

List of Texas Map Exhibits showing Extension of Boundary Gulfward through Center of Jetties.

LA. EXHIBIT WWW (1-10)
(La. Item 32, 34-42)

1. Affidavit of Captain Bernett W. Jardell of the Enforcement Division of the Louisiana Wild Life and Fisheries Commission.
2. Affidavit of Lieutenant Arnold Rutherford of the Enforcement Division of the Louisiana Wild Life and Fisheries Commission.
3. Affidavit of Norman Cheramie of Cameron, Louisiana.
4. Affidavit of Rene Terrebonne, of Cameron, Louisiana.

5. Affidavit of Patrick Cheramie of Cameron, Louisiana. Mr. Cheramie to testify on May 20, 1974.
6. Affidavit of Joseph A. Racca, of Cameron, Louisiana.
7. Affidavit of Henry Woodgett of Cameron, Louisiana.
8. Affidavit of George Bossley, of Sabine Pass, Texas.
9. Affidavit of Albert Bossley, of Sabine Pass, Texas.
10. Affidavit of Adair LeBeouf of Sabine Pass, Texas.

LA. EXHIBIT XXX
(La. Item 102(c))

Letter of J. Arthur Sandlin, Assistant Attorney General of Texas, dated October 16, 1970, addressed to Emmett C. Sole.

LA. EXHIBIT YYY (1-9)
(La. Items 22-30)

1. Surface lease from H. D. Cox to H. Prejean, dated November 1, 1949, filed for record on August 2, 1950, bearing File No. 59134 and recorded in Conveyance Book 79 at Page 180, Cameron Parish, Louisiana.
2. Oil, gas and mineral lease from William Lausen Cox, Hubert Davis Cox, Jr., Em-Marie Cox Jackson, wife of Robert W. Jackson, Carroll Adrian Tracy and Pearl Tracy Caperton, wife of Wallace Caperton to John W. Mecom, dated December 5, 1957, recorded December 28, 1957, bearing File No. 79493 and recorded in Conveyance Book 127 at Page 473, records of Cameron Parish, Louisiana.
3. Oil, gas and mineral lease from Sunny Pavell and Edward M. Carmouche to E. W. Brown, III, dated October 9, 1959, recorded January 9, 1960, bearing File No. 86918 and recorded in Conveyance Book 150 at Page 563, records of Cameron Parish, Louisiana.
4. Oil, gas and mineral lease from W. E. McCorquodale and J. H. Spector & Sons, to E. W. Brown, III, dated October 9, 1959, recorded January 9, 1960, bearing File No. 86919 and recorded in Conveyance Book No. 150 at Page 568, records of Cameron Parish, Louisiana.
5. Assignment of oil, gas and mineral lease from E. W. Brown, III to John W. Mecom, dated December 17,

1959, recorded June 28, 1960, bearing File No. 88712, and recorded in Conveyance Book 157 at Page 357, records of Cameron Parish, Louisiana.

6. Assignment of leases from John W. Mecom to U. S. Oil of La., Inc., dated June 1, 1960, recorded June 26, 1960, bearing File No. 88690, and recorded in Conveyance Book 157 at Page 303, records of Cameron Parish, Louisiana.
7. Oil, gas and mineral lease from Alvin V. Keown and Tom H. Lowe to Maxwell C. Huffman dated May 19, 1960, recorded June 28, 1960, bearing File No. 88714 and recorded in Conveyance Book 157 at Page 359, records of Cameron Parish, Louisiana.
8. Assignment of oil, gas and mineral lease from Maxwell C. Huffman to John W. Mecon, dated May 19, 1960, recorded June 28, 1960, bearing File No. 88715, and recorded in Conveyance Book 157 at Page 362, Cameron Parish, Louisiana.
9. Assignment of oil, gas and mineral lease from John W. Mecom to U. S. Oil of Louisiana, Inc. dated October 6, 1960, recorded October 14, 1960, bearing File No. 89753 and recorded in Conveyance Book No. 161 at Page 477, records of Cameron Parish, Louisiana.

LA. EXHIBIT ZZZ (1-2)

Letter to Hatley Harrison transmitting sketch of Sabine Lake (1840)

LA. EXHIBIT AAAA

Chapter 287, Acts of the 50th Legislature, 1947.

LA. EXHIBIT BBBB (Beaumont Enterprise 6/17/72)

LA. EXHIBIT CCCC (1-17)

Texas Offshore Mineral Leases

CCCC-1 No. M-45891 Dec. 9, 1955

Grantee: The Texas Co. P.O. Box 2332, Houston, Texas.

Description: Tract 2-S, Gulf of Mex. Jefferson County containing 810 acres, as shown by the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-2 No. M-54678 Oct. 2, 1962

Grantee: N. E. Nutter, P. O. Box 798, Houston, Texas.

Description: 2(S), Gulf of Mexico, Jefferson County, Texas

containing 1070 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-3 No. M-54681 Oct. 2, 1962

Grantee: Standard Oil Company of Texas, P.O. Box 1249, Houston, Texas.

Description: Tract 28(S), Gulf of Mexico, Jefferson County Texas, containing 640 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-4 No. M-55973 Nov. 5, 1963

Grantee: Standard Oil Co. of Texas, P.O. Box 1249, Houston, Texas.

Description: W/2 tract 29S, Gulf of Mexico, Jefferson County, containing 320 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-5 No. M-55974 Nov. 5, 1964

Grantee: Standard Oil Co. of Texas, P.O. Box 1249, Houston, Texas.

Description: W/2 Section 32S, Gulf of Mexico, Jefferson County, containing 320 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-6 No. M-55313 May 7, 1964

Grantee: Standard Oil Co. of Texas, P.O. Box 1249, Houston, Texas.

Description: Tract 33-S, Gulf of Mexico, Jefferson County, containing 640 acres, as shown on the Official Map of the Gulf of Mexico now on file in the General Land Office.

CCCC-7 No. M-54674 Oct. 2, 1962

Grantee: Standard Oil Co. of Texas, P.O. Box 1249, Houston, Texas.

Description: NW/4 of Tract 2(L), Gulf of Mexico, Jefferson County, Texas, containing 1440 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-8 No. M-54675 Oct. 2, 1962

Grantee: Standard Oil Co. of Texas, P.O. Box 1249, Houston, Texas.

Description: SW/4 of Tract 2(L), Gulf of Mexico, Jefferson County, Texas, containing 1440 acres, as shown on the offi-

cial map of the Gulf of Mexico now on file in the General Land Office.

CCCC-9 No. M-59194 February 1, 1966

Grantee: Texaco, Inc. Box 430, Bellaire, Texas 77402.

Description: SE/4 of Tract 13L, Gulf of Mexico, Jefferson County, containing 1440 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-10 No. M-58091 June 1, 1965

Grantee: Continental Oil Co., The Atlantic Refining Co., Tidewater Oil Co., and Cities Service Oil Co., P.O. Box 2197, Houston, Texas 77001.

Description: SW/4 of Tract 13L, Gulf of Mexico, Jefferson County, containing 1440 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-11 No. M-58092 June 1, 1965

Grantee: Texaco, Inc., P.O. Box 430, Bellaire, Texas 77402

Description: SW/4 of Tract 13L, Gulf of Mexico, Jefferson County, containing 1440 acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-12 No. M-58093 June 1, 1965

Grantee: The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.

Description: All of the SW/4 West of a line having a bearing of S 11° 30′ 00″ E (True) said line passing through a point having a Lambert Coordinate Value of X = 3,638,911.17 and Y = 710,343.69 of Tract 14L, Gulf of Mexico, Jefferson County, containing 380+ acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-13 No. M-58094 June 1, 1965

Grantee: Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.

Description: All of the NW/4 North of the 3 marine league line and West of a line having a bearing of S 11° 30′ 00″ E (True), said line passing through a point having a Lambert Coordinate Value of X = 3,638,911.17 and Y = 710,343.69 of Tract 17L, Gulf of Mexico, Jefferson County, containing

190+ acres, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-14 No. M-58095 June 1, 1965

Grantee: Texaco, Inc., P.O. Box 430, Bellaire, Texas 77402.

Description: All of Tract 18L North of the 3 Marine league line, Gulf of Mexico, Jefferson County, containing 1,910+ acres as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

CCCC-15 No. M-55972 Nov. 5, 1963

Grantee: Standard Oil Co. of Texas, Box 1249, Houston, Texas.

Description: W/2 of E/2 of Tract 2L, Gulf of Mexico, containing 1440 acres, Jefferson County, as shown on the official map of the Gulf of Mexico now on file in the General Land Office.

Special Master's Exhibit

Special Master's Exhibit A, attached to Report, Appendix A, showing the proposed boundary lines as set forth by the parties.

Supreme Court, U. S.
FILED
MAY 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

* * *

NO. 36, ORIGINAL

* * *

THE STATE OF TEXAS,

Plaintiff

V.

THE STATE OF LOUISIANA,

Defendant

* * *

ACCEPTANCE OF THE STATE OF TEXAS TO THE REPORT OF THE SPECIAL MASTER, WITH TWO EXCEPTIONS

* * *

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May 1975

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

* * *

NO. 36, ORIGINAL

* * *

THE STATE OF TEXAS,
Plaintiff

V.

THE STATE OF LOUISIANA,
Defendant

* * *

ACCEPTANCE OF THE STATE OF TEXAS TO THE REPORT OF THE SPECIAL MASTER WITH TWO EXCEPTIONS

* * *

The Report of the Special Master, Judge Robert Van Pelt, was filed in this Original action on April 14, 1975. The parties were given 45 days within which to file their exceptions, if any, to the Report. The State of Texas, Plaintiff, accepts and urges approval of the Report, subject to the two exceptions hereinafter stated.

EXCEPTIONS

I.

THE SPECIAL MASTER ERRED IN HOLDING THAT AFTER OVER ONE HUNDRED YEARS OF HAVING ABUTTING AREAS OF OFFSHORE JURISDICTION, TEXAS AND LOUISIANA HAVE NEVER HAD A GULFWARD BOUNDARY BETWEEN THEIR AREAS OF JURISDICTION.

II.

THE SPECIAL MASTER ERRED IN HOLDING THAT THE LATERAL OFFSHORE BOUNDARY TO BE CONSTRUCTED BETWEEN THE STATES OF TEXAS AND LOUISIANA IS TO BE DETERMINED SOLELY BY AVULSIVE, MAN-MADE ADDITIONS TO THE SHORELINE.

STATEMENT

The Master herein erred in his determination of the two principle legal issues to be decided by him. First, he held that after over 100 years of having abutting areas of offshore jurisdiction, Texas and Louisiana have never had a Gulfward boundary between their areas of jurisdiction. Second, and compounding his first error, he held that the lateral boundary to be constructed is to be determined

solely by avulsive, manmade additions to the shoreline--the jetties.

The right answer, Texas believes, is the converse of the Master's. First, whether precisely delimited or not, the very existence of two abutting areas of offshore jurisdiction implies a boundary between the two, dating to the creation of the offshore areas of jurisdiction. One is and has been that of Texas; the other is and has been that of Louisiana. Texas and Louisiana have not been tenants in common all these generations.

Second, even if one ignores the legal soundness and compelling logic of a long pre-existing lateral boundary, Texas believes that proper application of today's legal doctrine to the process of fixing the boundary anew leads inevitably to the choice of a median line based on the natural shoreline of Texas and Louisiana, before the United States Corps of Engineers built its jetties.[1]

---

[1]The Special Master purported to base his conclusion on the stated basis that under the law of prescription and acquiescense, Texas has lost its right to contend for any other line. The Master does not favor the Court or the parties hereto with any citation, authorities for this proposition (which was not seriously relied upon by any party hereto, and never urged at all by the United States), nor does he give any illuminating discussion about what facts or circumstances he sees as dictating a conclusion on that basis. Since it is the belief of Texas that the doctrine of prescription and acquiescense simply cannot be used factually or legally to determine the

With regard to the first point, it seems fairly clear that if one accepts it as a correct premise, little is left to legitimate debate. As will be developed more fully hereinafter, the law of the mid-1800's clearly endorsed (in the absence of treaty or specific legislation) the equity of the "middle" line --the lineal ancester of today's more precise "median" line (see Texas Exhibit "DDD" and Special Master's Exhibit). Under our law, that boundary simply cannot be changed by avulsion, and the United States Corps of Engineers building of the jetties is apparently conceded by all parties to be avulsive in nature. (Nor can one reach a contrary result by the indirection of claiming that while the boundary cannot be moved by avulsion, the "mouth of the river"--a landmark spelled out in the Texas Boundary Act of 1836 (1 Laws, Republic of Texas, 133)--can be so moved, thus reaching the desired--but wrong--result. The United States largely aban-

Footnote 1 cont.

rights of the parties hereto, we will defer our discussion of that seemingly inclusive and irrelevant aspect of the case until the close of our remarks herein. It seems apparent from the content of the Master's Report itself that even the Master was not totally comfortable in purporting to rely on prescription and acquiescense, since he devoted not more than one-fourth of a page in his 47 page Report to that theory, while spending some 14 pages in refuting what we believe to be Texas' valid contentions with regard to the lateral boundary between Texas and Louisiana.

doned this contention in its Post Trial Brief, and the Master circumspectly avoided holding that the "mouth of the river" had been transported seaward three miles by the Corps of Engineers.)

It is worthy of long note that a median line based on the natural shoreline--either historic or present --is a very markedly different line than one drawn down the middle of the jetties and extended seaward. This is, of course, hardly surprising, since the object of the Corps of Engineers was concededly not to attempt an equitable division of offshore lands, but rather, to build a structure the design of which was dictated by the strength and direction of prevailing currents and wind.

Why, then, even if one erroneously rejected the seemingly clear concept of a long-existing boundary would one reach the conclusion that application of today's law to a presumably open question would result in a conclusion that the jetties determine the lateral boundary? Texas respectfully submits that the Master has succumbed to the temptation to apply the "eyeball" method of delimitation rather than the precise technical commands of the law. The Master appears to have been dissuaded from a correct result, by the belief that a jetty line is a more "equitable" line than a precisely determined median line:

> "The use of Article XII [resulting, by the Master's logic in a jetty line] also produces an equitable result in your Special Master's opinion, while the lines suggested by Texas and Louisiana do not

produce an equitable result.

> "Your Special Master believes the position of the United States to be the most equitable. . . . " (Emphasis added. Special Master's Report, page 29.)

And regarding the median line based on present shorelines (not contended for by Texas because of its influence by the avulsive addition of the jetties):

> "It also produces an inequitable result." (Emphasis added, Special Master's Report, page 40.)

and later:

> "A median line using the modern coastline without the jetties produces the most easterly line of any. This is graphically shown by and was a reason for the Special Master's Exhibit. It seems inequitable on its face and is not offered by Texas as its proposed boundary line." (Emphasis added. Special Master's Report, page 42.)

and

> "To comply with the Convention and to do equity both jetties must be included as a part of the baseline." (Emphasis added. Special Master's Report, page 45.)

What is the "equity to be sought in this dispute?

It is a fair and equal division of the offshore lands of Texas and Louisiana. How then, one might well ask, can one fail to do equity if one divides that territory by a precise drafting method having as its very design and purpose the construction of a line which at all its points is precisely equidistant from the nearest points on each shoreline? If there were no jetties, presumably none would disagree with the equity of a median line based on the natural shoreline.

What, then, is it about the jetties that compels departure from what would otherwise be concededly a proper result?

Can it be the fact that such a median line would cross the east jetty? There seems nothing compelling about that fact--the jetties were designed, built, and are maintained by the United States. Their ownership is specifically retained in the United States by Section 5(c) of the Submerged Lands Act. It seems highly doubtful that this circumstance would have troubled the international law commission (Special Master's Report, page 43)which was concerned with the troublesome practical problem of cutting of peninsulae of land under the complete sovereignty of other nations (and which commission would equally, if not more troubled by this disrupting effect of extremely long harborwork). U. N. General Assembly, Official Records 11th Session, Supp. No. 9, 16 (1956); I Yearbook of International Law Commission 1956, 193.

Can it be that the fact that the jetties form a "navigable channel" compel their choice as the

determinates of the lateral boundary? (See Special Master's Report, page 43) This might well be a relevant factor if Texas and Louisiana were independent nations; but neither is. The United States --not Texas or Louisiana--has jurisdiction to control navigation through the jetties. Delimitation of the lateral boundary between the two states cannot effect navigation regulated by the United States.

Can it be the fact that Louisiana is allowed to measure the seaward limit of her offshore lands from the end of the east jetty? This seems hardly persuasive--Louisiana would still so measure the seaward extent of her submerged lands, whether the jetties or the median line based on natural shorelines is chosen for the lateral boundary. The law which gives Louisiana the right to measure seaward three miles from the jetty tip gives her that right only as that area may be defined laterally in this case. If it were otherwise, there would be no necessity for this litigation.

Can it be the fact that the jetties form easily referred to physical landmarks for boundary identification? While this may have a simplistic appeal, it has no basis in law, domestic or international.

Can it be that the makeup of the natural shoreline is such that their irregularity produces a median line not truly "median" and thereby fails to live up to its warranty of equity? Clearly this is not the answer--all of the experts--Hodgson, Young, Alexander, and Wilson, agree that the coastlines, excluding the jetties were "regular" within the meaning

of the Convention. But, Texas submits, this was the error fallen into by the Master--the very error he chided Louisiana for when it contended the Texas line was wrong because it ran "beneath" Louisiana. (Special Master's Report, page 35.) The Master correctly takes issue with Louisiana because her position rests on the assumption that only a due south line is proper. Texas believes it correctly takes issue with the Master's position because he assumes that only the jetty line is "equitable".

If no other sound reason can be found to define the lateral boundary solely by use of the jetties, then is there some compelling legal reason dictated by the black letter of domestic or international law, that compels a departure from equity and a withdrawal to the jetties? Texas submits there is not, and that in fact literal application (by analogy or otherwise) of today's international or domestic law leads inexorably to the conclusion that the median line, based upon an historic shoreline, is the proper, lateral boundary.

I.

THE SPECIAL MASTER ERRED IN HOLDING THAT AFTER OVER ONE HUNDRED YEARS OF HAVING ABUTTING AREAS OF OFFSHORE JURISDICTION, TEXAS AND LOUISIANA HAVE NEVER HAD A GULFWARD BOUNDARY BETWEEN THEIR AREAS OF JURISDICTION.

In determining the proper lateral offshore

boundary between Texas and Louisiana, the Special Master has framed the issue thus:

> "The first question to be determined is whether or not the Geneva Convention on Terrirorial Sea and Continental Zone applies to this boundary." (Special Master's Report, page 21.)

Texas submits that this is not the first question to be resolved. Indeed it may not even be relevant to this case. Following the process consistently utilized by this Court, the first question is what do the instruments of annexation reveal concerning the location of the lateral boundary of the two states at the time of admission? If they do not reveal the precise location of the boundary, the next question is where would the boundary be precisely located by virtue of the applicable law at the time of annexation? And finally, has any circumstance or event occurred which would have the effect of legally altering the boundary since the time of annexation? It is only in relation to this last inquiry that the relevance, if any, of the Geneva Convention to this controversy should be considered. The Master deals with these issues only in the context of Article 12 of the Convention, insofar as that article allows exceptions of historic title or special circumstance to justify determination of a lateral boundary by a method other than a median line. (Page 35, Special Master's Report.) Texas submits this procedure and the Master's conclusions pursuant thereto are erroneous. Therefore, we will discuss the issues from the perspective which we believe this Court has previously viewed such controversies.

A. An Historic Lateral Boundary Between Texas and Louisiana Existed Prior to Precise Delimitation.

The Special Master's conclusion that no boundary of any nature existed or now exists between Texas and Louisiana is based on the premise that the 1836 Boundary Act of the Republic of Texas "simply does not describe or delimit any lateral boundary line from the mouth of the Sabine gulfward. No meridian is chosen, no angle of departure from the coast is referred to, nor is any point in the Gulf three leagues from land specified." (Special Master's Report, page 37.) Texas has not and does not now assert that the operative historical documents precisely plotted the lateral boundary line. But to leap to the conclusion that since the documents do not precisely locate the boundary they are irrelevant and that no boundary existed in absence of a precisely staked out line is inconsistent with the testimony at the trial of this cause, international law, and the law of this country.

1. The Historic Lateral Boundary Between Texas and Louisiana.

Principles applicable to disputes between states of the United States over their mutual boundaries are well established. The boundaries of a state are established by an act of Congress when the state is admitted as a member of the Union, and the boundary continues as it existed at the time and cannot be changed without the consent of the state. Indiana v. Kentucky, 136 U.S. 479 (1889). Nebraska v. Iowa, 143 U.S. 359 (1892); Washington v. Oregon,

211 U.S. 127 (1908). Where a river forms a boundary between states, the boundary follows the varying course of the river if such variances occur through the natural and gradual process of erosion and accretion. However, if a change in a river results from avulsion, caused by either natural or artificial means, no change in boundary results. Nebraska v. Iowa, supra; Washington v. Oregon, supra; Arkansas v. Tennessee, 246 U.S. 158, (1918); Minnesota v. Wisconsin, 252 U.S 273 (1920); Durfee v. Duke, 375 U.S. 106 (1963).

Judicial determination of the precise limits of a long existing although not precisely staked out lateral boundary should be made on the basis of the operative facts and law as of the date of creation of the boundary. The United States Supreme Court adopted this principle in Wisconsin v. Michigan, 295 U.S. 455, 461 (1935).

> "As it is impossible to identify any channel in the bay as that indicated by the acts referred to, the intention of Congress must be otherwise ascertained."

The Court did not adopt the principle indicated by the Special Master that international law is the primary source by which courts of this country are to be guided in determining boundary disputes between states. (Special Master's Report, page 22.)[2] See

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[2]Similarly, the use of international law by this court in determining a portion of the boundary between two states in New Jersey v. Delaware, 291

also New Mexico v. Texas, 275 U.S. 279 (1927); Minnesota v. Wisconsin, supra.

The rights of the parties become fixed at the time of annexation as surely as if the boundary had been then fixed by metes and bounds.[3] Applying these basic principles to the case at bar initially requires an examination of the documents and circumstances defining the boundaries of Texas at the time of her admission to the Union.

As a Republic, Texas in 1836 asserted a three league territorial sea, bounded laterally by lines beginning at the mouths of the Sabine and Rio Grande rivers:

Footnote 2 cont.

U.S. 361 (1934), also relied on by the Master was required because none of the documents affecting title to the area in dispute reflected the intent of ownership, therefore, international law was applied. Significantly the court traced the development of the relevant principle, the Thalweg, from its position in modern law back to its "germinal existence" in 1783, justifying its application to the boundary dispute in question. 291 U.S. at 383, 384.

[3] Lambert's Point Co, v. Norfolk &W. Ry. Co., 74 S.E. 156, 157 (Va. 1912). In this case a lateral boundary to mid-river between two riparian owners held to have existed "in contemplation of law" even though never "judicially ascertained" nor privately agreed, and thus not subject to change by artificial improvements by one owner.

> "That from and after the passage of this act, the civil and political jurisdiction of this Republic be, and is hereby declared to extend to the following boundaries, to-wit: Beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, then due north to the 42nd° of N. Latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning." (1 Laws, Republic of Texas, 133.) (Emphasis added.)

The Congress of the United States recognized that territorial sea by its Annexation Resolution in 1845:

> "That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas. . .said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments. . ." 5 Stat. 797. (Emphasis added.)

In the Annexation Resolution, the Congress accepted all "the territory properly included within and rightfully belonging to the Republic of Texas." The phrases "properly included" and "rightfully be-

longing" were placed in the Resolution because of Congressional uncertainty of the Republic of Texas' disputed western boundary with Spain and Mexico. U. S. v. Louisiana, et al., 363 U.S. 1, 40-41 (1960). A solution to the uncertainty of the western landed boundary, as well as the seaward boundary was anticipated through "the adjustment by this government of all questions of boundary that may arise with other governments." Legislative history reveals that no uncertainty or lack of consideration existed as to the precise location of the eastern landward boundary between the United States and the Republic of Texas/State of Texas. (See Texas Post-Trial Brief, pages 11-13.) The landward boundary between the two nations on the Sabine River was from its mouth on the Gulf of Mexico in the Sea to Logan's Ferry at 31° 58' 24" North Latitude.[4] The location of such line coincided with that part of the boundary established by the 1836 Texas Boundary Act, supra.[5]

No other discussion or documents referred to the eastern boundary until 1848 when Congress authorized the State of Texas to extend her eastern boundary to include one-half of the Sabine River from its mouth to the thirty-second degree of north latitude,[6] (an area previously reserved to the United

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[4]S. Doc. No. 199, 27th Cong., 2d Sess. 59.

[5]"beginning at the mouth of the Sabine River . . . thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: . . ."

[6]9 Stat. 245.

States). This congressionally authorized eastward extension necessarily extended the seaward lateral boundary eastward, by moving the landward departure point from the west bank to the geographic middle of the river mouth.

That Congress and the State of Texas as well as the State of Louisiana intended the offshore lateral boundary of the two states to commence at the mouth of the Sabine River in 1812, 1845, and 1848 can easily be ascertained through the historical documents relating to the states respective boundaries and annexation resolutions.

The 1812 Act of Congress admitting Louisiana to the Union stated:

> "Beginning at the mouth of the River Sabine; thence, by a line to be drawn along the middle of said river, . . . thence, bounded by said Gulf, to the place of beginning, . . . " (2 Stat. 701, 702)

The Republic of Texas 1836 Boundary Act stated:

> "Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land, . . ." (1 Laws, Republic of Texas, 133.)

The Congressional Annexation Resolution of 1845 admitting Texas into the Union states:

"That Congress doth consent that the

> territory properly included within and rightfully belonging to the Republic of Texas, may be erected into a new State . . . " (5 Stat. 797)

And finally, the 1848 congressional act consenting to the extension of the eastern boundary of Texas stated:

> ". . . also one-half of the Sabine River, from its mouth . . . " (9 Stat. 245.)

The Supreme Court has decided that the western half of the Sabine River was never a part of Louisiana. The United States thus is the only party ever having had even a potential claim to the offshore "sliver". The United States has conceded Texas' historic ownership of this area, dating to 1848, by stipulation entered into between Texas and the United States pursuant to United States v. Louisiana, et al., 394 U.S. 1 (1969). Footnote two contained at page two states:

> "A Stipulation filed with the court identifies Texas' 1845/1849 coastline and also its gulfward boundary three leagues distant. An Act of November 24, 1894, Laws, 3d Tex. Leg. C.2, P.4, adopted with the consent of Congress, Act of July 5, 1848, 9 Stat. 245, extended Texas' boundary opposite Sabine Pass. The United States has accepted Texas' three league boundary opposite the western half of the Sabine Pass, not as a boundary as it existed when the State came into the Union in

> 1845, but one approved by Congress before passage of the Submerged Lands Act, and as such equally entitled to recognition under Section 2(b). The line identified in the Stipulation as the line to be recognized as Texas' historic offshore boundary includes the 1849 extension, the United States reserves the effectiveness of that extension as against other claims, for example, any that might be asserted by Louisiana." (Emphasis added.)

Thus, Texas has an historic boundary in the Gulf of Mexico for the purpose of the lateral offshore boundary between Texas and Louisiana. This boundary was established in 1845 and modified in 1848. It extends from the middle of the mouth of the Sabine River as it existed in 1845/48 to a point three marine leagues seaward.

2. Existence of a Boundary Though Not Precisely Delimited.

The existence of an historic boundary, though not precisely delimited has been recognized by this Court and by Congress on many occasions. The unplotted location of a three league seaward boundary for the State of Texas was affirmed by this Court. U.S. v. Louisiana, 363 U.S. 1 (1960).

Further recognition of the existence of state lateral boundaries is seen in the contentions of the United States and Decrees entered pursuant to the first California, Texas, and Louisiana tidelands cases. In each instance, the States were enjoined

from certain actions in the territorial sea, limited laterally by the boundaries of the States.[7]

Further, Sec. 1311(a), Submerged Lands Act, supra, states in part:

> "It is determined and declared to be in the public interest that title to and ownership of the land beneath navigable waters within the boundaries of the respective States . . . are . . . recognized, confirmed, established and vested in and assigned to the respective States . . ." (Emphasis added.)

Thus, the general notion of State offshore and lateral unplotted boundaries, pre-existing the Act, was clearly confirmed by Congress. The Special Master, however, attempts to justify his premise that boundaries do not exist between states unless or until precisely written down in cartographer's terms by concluding that in United States v. Louisiana, 363 U.S. 1 (1960), "most if not all of the members of the Supreme Court, whether in concurrence or in dissent, recognized that lateral boundaries were not being determined when Texas was admitted into the Union." (Special Master's Report, page 39.) Texas submits that this case stands for precisely the opposite proposition, the position contended for by Texas. In attempting to

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[7] U.S. v. Texas, 339 U.S. 707 (1950) at page 709; U.S. v. Texas, 340 U.S. 900, 901 (1950); U.S. v. California, 332 U.S. 804, 805 (1947); U.S. v. Louisiana, 304 U.S. 900 (1950).

determine the seaward boundary of the State of Texas "as it existed at the time such state became a member of the Union,"[8] for purposes of the Submerged Lands Act, the Supreme Court held that although the Annexation Resolution intentionally contained no specific land or sea boundaries, Congress clearly anticipated that the boundaries set out in the Texas Boundary Act would be pressed against other nations and further that the three league boundary asserted in the Boundary Act was finally obtained pursuant to the Annexation Resolution through the Treaty of Guadalupe Hidalgo in 1848. 363 U.S. at 47-64. The fact that the location of the three league boundary had never been precisely mapped out, in no way kept the Court from finding the existence in 1845 of a boundary three leagues from the Texas shore. As succinctly stated by Mr. Justice Black in the paragraph following that relied on by the Special Master:[9]

> "Moreover, the Submerged Lands Act prescribed no standards for determining a strictly 'legal' boundary according to the conveyancer's art. There are, of course, no markers out in the Gulf of Mexico to show where the boundaries were when the states were admitted. Since some were admitted anywhere from 140 to 150 years ago, there are no living witnesses to testify where their

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[8] Submerged Lands Act, Section 2(a)(2).

[9] Special Master's Report, page 38.

> boundaries were at that time. But despite these difficulties, it is our duty to give effect to the congressional act as best we can. It is therefore my view that since we cannot look to legalistic tests of title, we must look to the claims, understandings, expectations and uses of the states throughout their history. This is because of the congressional expressions, stated time and time again that the act's purpose was to restore to the states what Congress deemed to have been their historic rights and purposes." 363 U.S. at page 90 (Emphasis added).

We agree with the statement of Mr. Justice Black and submit that his position is entirely consistent with the long standing approach of the Supreme Court in settling boundary disputes between states. If no boundary existed prior to the precise delimitation by the Court at the termination of the litigation, the Court would have no reason to examine historic documents concerning a state's boundary or to be bound by them. Wisconsin v. Michigan, supra; New Mexico v. Texas, supra; Minnesota v. Wisconsin, supra.

Nor was the long existence of a lateral boundary between Texas and Louisiana seriously contested at trial. Although not mentioned by the Special Master in his report, Dr. Hodgson, the Geographer of the United States Department of State, has acknowledged that a lateral boundary necessarily exists between two states having offshore jurisdictions, even though not precisely delimited, as in the

example of the Alaska-Canada offshore interface, a situation where neither country has by unilateral act attempted to establish a lateral offshore boundary. Nor have the two nations established a boundary by agreement. In such a vacuum, the witness for the United States testified that a lateral offshore boundary does exist nevertheless. (Tr., page 760.) Richard Young, law associate of Manley O. Hudson to 1956, member of the State Department Advisory Committee on the Law of the Sea, the Executive Board of the Law of the Sea Institute of the University of Rhode Island, (See Tx. Exh. "MMM", Tr., pages 939-946) described such a boundary as "inchoate" (Tr., pages 986, 989, 1078, 1079). Aaron Shalowitz, while employed by the United States Coast and Geodetic Survey, acknowledged the existence of such an "inchoate" lateral boundary between Texas and Louisiana in the form of a median line based upon the historic shorelines. (Tr., pages 656-696; Tx. Exh. "YYY".)

The concept of a boundary existing but not yet precisely laid down is by no means unknown to international law. The principle was recognized in the following terms by the International Court of Justice in the North Sea Continental Shelf Cases:

> "The appurtenance of a given area, considered as an entity, in no way governs the precise delimitation of its boundaries, any more than uncertainty as to boundaries can affect territorial rights. There is for instance no rule that the land frontiers of a State must be fully delimited and defined, and often in vari-

> ous places and for long periods they are not, as is shown by the case of the entry of Albania into the League of Nations (Monastery of Saint Nacum, Advisory Opinion, 1924, P.C.I.J., Series B, No. 9, at p. 10).[10]

In summary, the Master erred in disregarding the operative language of the relevant historical documents and in holding that no lateral offshore boundary exists or has existed between Texas and Louisiana.

Texas and Louisiana have had abutting areas of offshore jurisdiction with a boundary between them beginning at the mouth of the Sabine River and extending gulfward dating to the creation of the offshore areas of jurisdiction even though not precisely delimited.

In the absence of clear statutory language, and in the absence of illuminating legislative history, we must determine, by reference to standards of domestic and international law extant in 1845/48, how the Congress would have intended that the eastern boundary of Texas would be extended gulfward for three marine leagues from the mouth of the Sabine River.[11]

B. The Concept of Equitable Delimitation, Best Achieved by the Median Line, was the Most

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[10] [1969] I.C.J. Reports 3, at 32.

[11] See discussion, pages 24 to 29 , infra.

Accepted Method of Delimitation of Lateral Boundaries in 1845/49.

Had Congress in 1845 focused on the question of Texas' lateral offshore boundaries it would have selected the middle line as the most acceptable method of delimiting those boundaries.

Neither the United States nor Louisiana seriously disputed this contention; therefore, we will not burden this brief with a lengthy discussion but will limit the review to the most important points. We refer the Court to Pages 17-27 of Texas' Post-Trial Brief to the Special Master for a complete discussion of this point.

The middle line method of water boundaries was recognized as early as the Thirteenth Century during the reign of Edward II.[12]

In the Seventeenth Century, by treaties of 1658 and 1661, Sweden and Norway attempted to define a maritime boundary between their respective territories in the waters of the fjord leading to the present city of Oslo. More than two centuries later, the line in question became the subject of dispute which was submitted for decision to an arbitral tribunal in the so-called Grisbadarna Case.[13] The

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[12]See Fulton, The Sovereignty of the Sea, 542, 543 (1911).

[13]Scott, Hague Court Reports, 121-140 (1916).

Tribunal was asked to interpret 1658 and 1661 treaties between Sweden and Norway defining a maritime boundary between their respective territories.

In its award, the Tribunal held 1658 and 1661 were the critical dates for determining the parties' rights, even though the original treaty line was incomplete and had to be substantially lengthened. For this reason, it denied to Norway the use of certain reefs as basepoints which had not emerged from the water in 1661.

This decision is particularly notable for its recognition of the middle line principle and for international recognition that a boundary should be delimited according to the methods of boundary delimitation accepted at the time of the creation of the boundary, and applied to the physical circumstances then existing. The subsequent emergence of reefs off the coast of Norway was rejected as affecting the boundary. This principle has been adopted by the United States Supreme Court, see pages to 13, supra, and pages 43 to 46, infra. (Wisconsin v. Michigan, supra.)

By the first half of the Nineteenth Century the middle line theory became the only concept generally accepted for use in the United States.[14] In the Treaty between the United States and Great Britain of June 15, 1846, as regards the Juan de Fuca Straits between the U. S. and Canada the "middle" line was agreed to be the boundary through the

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[14] See Treaty of 2 September 1783 between the United States and Great Britain, Article II.

straits. These treaties clearly represent recognition and acceptance by the United States of the median line principle as the proper method of boundary delimitation, a recognition that has continued to be present.[15]

With regard to state boundaries, the "middle" line was the basis of the New York-New Jersey compact of 1833,[16] which was ratified by Congress in 1834,[17] thus further indicating the recognition by Congress at that time of the validity of the middle line principle. The agreement provided in pertinent part as follows:

> "ARTICLE FIRST. The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson River, opposite the point on the west shore thereof, in the forty-first degree of certained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the waters between Staten Island and

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[15] Yearbook of ILC (1953),Vol. II, p. 89; Boggs, International Boundaries, Columbia University Press, New York, p. 187, Fig. 24, (1940).

[16] N.J.S.A. 5552: 28-17 to 28-22 (1955); N.Y. State Law, Art. 2, Section 7 (McKinney 1952).

[17] 4 Stat. 708 (1834).

> New Jersey, and of Raritan Bay, to the main sea; except as hereinafter otherwise particularly mentioned." (Emphasis added)

Also, in Wisconsin v. Michigan, supra, the Supreme Court looked to international and domestic law applicable in 1836, the year the Enabling legislation was passed creating the Wisconsin Territory and annexing Michigan as a state, to determine a dispute over the boundary through Green Bay. In deciding the case, the Court first determined that Congress in 1836, intended Michigan and Wisconsin to "have equality of right and opportunity in respect of those waters, including navigation, fishing and other uses."[18]

The Court then concluded that the best method of assuring "equality of right and opportunity" is to equally divide the area.

> "On the facts found, equality of right can best be attained by a division of the area as nearly equal as conveniently may be made, having regard to the matters heretofore litigated and finally adjudged between these States. The rule that the States stand on an equal level or plane under our constitutional system (Wyoming v. Colorado, 259 U.S. 419, 465, 470, 42 S.Ct. 552, 66 L.Ed. 999) makes in favor of that construction of the boundary pro-

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[18] 295 U.S. at 462.

> visions under consideration." 295 U.S. at 462 (emphasis added).

Thus, it is evident that by 1845, the middle line concept was the accepted theory of water boundary delimitation. As aptly summarized by Mr. Young when asked the prevalent principles in 1845/1849:

> ". . .I would say that it was well established by the 1840's that in general a boundary should be drawn in accordance with the legal principles and the physical facts existing on the effective date of the instrument establishing the boundary.
>
> "Second, by the 1840's, I think there were two principles well developed in international law for determining water boundaries. There was the concept of the middle line and the concept of the thalweg or navigable channel. The thalweg found its use principally in situations involving navigable rivers where equality of access for navigation was important. The middle line concept had developed in relation to lakes and to narrow seas, and in cases like the Grisbadarna treaties, to an actual lateral boundary." (Tr., pgs. 1005-1006)

With regard to the present controversy, wherein the Supreme Court has already established that Congress intended a middle line, and not a thalweg, for the River portion of the boundary, Mr. Young rightly observed that such intent should be followed

into the Gulf (Tr., pages 1005-1007).

Thus, while lateral boundaries through the territorial sea may have been less focused upon by the law of 1845/49 than now, it is evident from the methods used delimiting boundaries in lakes, rivers, bays, and straits that the middle line principle (direct lineal ancestor of the Geneva Convention's median line) would have been recognized at that time as the proper method of boundary delimitation in territorial waters.

C. Prescription and Acquiescence Has Not Operated to Alter the Historic Lateral Boundary Between Texas and Louisiana.

Insofar as boundaries between states are concerned, this Court consistently has required extremely clear and continuous substantial actions (or inactions) over very substantial time periods before it has been willing to entertain or sustain pleas of boundary alteration on the basis of acquiescence or prescription. See Arkansas v. Tennessee, supra, holding against Tennessee, which claimed a boundary based upon 120 years of alleged acquiescence; Louisiana v. Mississippi, 202 U.S. 1 (1906), sustaining Louisiana in the claim of acquiescence of 94 years by Mississippi, of a land boundary; Virginia v. Tennessee, 148 U.S. 503 (1893), sustaining Tennessee in their claim that Virginia had for 90 years acquiesced in land boundary; and Oklahoma v. Texas, 272 U.S. 21 (1926), wherein the court failed to sustain a plea of acquiescence based upon 24 years, after noting that the period was shorter than any ever sustained by the court.

It is clear from the cases that the time involved must generally be a great deal longer when dealing with a purely water boundary, as opposed to a boundary on land. The reason for the distinction apparently is that when dealing with a land boundary there are a great many more indicia of ownership and jurisdiction than a purely water boundary. Thus, in Virginia v. Tennessee, supra, the court was concerned with disputed land between Virginia and Tennessee and found it to be a part of Tennessee since both states had exercised political jurisdiction up to the line claimed by Tennessee, both states levied taxes on their respective sides up to the line claimed by Tennessee, both states granted franchises to people resident thereon up to the line as claimed by Tennessee, voting was determined by the line as claimed by Tennessee, state courts regularly exercised jurisdiction on the respective sides as claimed by Tennessee, congressional districts were determined with reference to the line as claimed by Tennessee, and the natural sentiments and affections of the residents of the area were as claimed by Tennessee. The alleged period of acquiescence was 90 years.

The Master concluded, without evidentiary support, that Texas and Louisiana have acquiesced in a lateral boundary through the middle of the jetties. (Special Master's Report, page 14.)

None of the parties in the hearing or in briefs filed with the Master relied on acquiescence as a method of transporting the boundary between Texas and Louisiana to the ends of the jetties. The United States has not argued acquiescence. Louisiana in

the hearing and in its post-trial brief (Pages 76-82) argued only that it has not acquiesced in Texas ownership of the entire area within the jetties. In fact, on Page 82 of its post-trial brief, Louisiana admits that Texas has not acquiesced in a boundary between Texas and Louisiana.

> "This discussion on acquiescence is to demonstrate to the court that neither side is able to establish that a lateral boundary between Texas and Louisiana in the Gulf had been fixed by one of the states as a definite line recognized by the other state over a long period of time. The Master has already considered in his prior report the various elements necessary to establish a boundary between two states by acquiescence. These factors do not exist to this portion of the boundary between Texas and Louisiana."[19] (Emphasis added)

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[19]The discussion of acquiescence referred to in the above indented quote is entitled by Louisiana as follows: "There has been no Acquiescence by Louisiana as to Texas' Claimed lateral boundary in the Gulf of Mexico." As the court will note, the discussion cites affidavits introduced by Louisiana claiming that Louisiana has enforced its fishing laws in the east half of the area within the jetties. It also attempts to refute Texas' affidavits introduced showing that Texas has enforced its laws in the entire area within the jetties. There is no doubt but that Louisiana has admitted that Texas has not acquiesced in the boundary running through the middle of the jetties.

In disposing of one of the most important issues in this case (whether or not the jetties shall be used in determining the lateral offshore boundary), in a single paragraph (Special Master's Report, Page 14), the Special Master states only that "on most of the maps introduced into evidence by both states the geographic middle of the jetties is designated as the boundary line between the states of Texas and Louisiana," and that "there is considerable evidence that these two states have recognized the geographic middle of the jetties as their boundary in the enforcement of fishing and wildlife laws."

Many maps were introduced as exhibits before the Special Master during the long history of this case. The Master does not favor the Court or the parties with a designation of the maps relied on to support his conclusion. The conclusion of the Master simply is not supported by the record. None of the maps constructed or drawn by agencies of the State of Texas show the boundary to extend through the jetties. To the contrary, Texas drawn and constructed maps uniformly show the boundary between Texas and Louisiana to extend only to the natural mouth of the river. Louisiana's Exhibit VVV contains a list of several maps showing the boundary to extend through the jetties. Notably, none of these maps were prepared by agencies of the State of Texas. A greater number of maps, including several prepared at various times by agencies of the State of Louisiana and the United States, extend the boundary only to the natural mouth of the river. See, e.g., Tx. Exh. F, Items 9, 10, 29; Tx. Exh. A, Items 1, 2, 3, 5, 8, 49, which show the boundary to extend only to the natural mouth of the

river. Texas' Exhibit F, Item 37, prepared by the Texas Highway Department in 1970, shows that Texas mapmakers agreed with mapmakers from Louisiana and the United States that no boundary existed between Texas and Louisiana in the jetties. Thus, while there may be a few maps extending the boundary through the jetties (none of which were prepared by Texas agencies) it is simply not true that "most" of the maps extend the boundary through the jetties.

The Master also erred in his conclusion that the states have recognized the geographic middle of the jetties as their boundary in the enforcement of fish and wildlife laws. Louis M. Morris, Martin Verboon, Robert LeBlanc, and A. A. DeLee, each of whom are long time residents of this area, testified by affidavit that Texas uniformly has enforced its fishing laws in the entire area within the jetties. (See Tx. Exh. III, OOO, PPP and QQQ.) Morris, a former director of enforcement of the Jefferson County Office of Parks and Wildlife Division, testified that the Parks and Wildlife Department has for many years annually issued a hardbound handbook containing the rules and regulations and statutory authority and responsibility of the Department to be utilized by Department employees in the enforcement of Texas game and fish laws. This publication states that it is the responsibility of the Parks and Wildlife Division to enforce Texas fish and game laws to the Texas statutory line, which lies East of the jetties. Indeed Morris testified that the Texas Department of Parks and Wildlife enforced the game and fishing laws of Texas in the entire area of the jetties.

The Texas Statutory line, enacted in 1947 by the Texas Legislature, Article 5415A, Vernon's Texas Civil Statutes, is further evidence that Texas never acquiesced in its lateral boundary with Louisiana extending through the jetties. Whether that boundary has any other legal effect, its enactment forcefully demonstrates a lack of acquiescence which is amplified by the fact that Texas leased mineral rights in the area east of the middle of the jetties. (See Tx. Exh. HHH.)

In fact, the problems resulting from overlapping leases in the area off the natural mouth of the river resulted in the so-called "administrative line", agreed to by the United States and Texas as a temporary convenience in offshore leasing. Clearly, the administrative line was never intended to fix the boundary between Texas and Louisiana. The United States Department of Interior maps showing that line bear the notation:

> "The east boundary of this area as shown hereon has been adopted administratively as the limiting boundary of the leasing blocks; it is not to be construed as being an extension of the boundary between the states of Texas and Louisiana."

The United States does not contend that by agreeing to the "administrative line," Texas has in any way conceded it to be the actual and lawful boundary between the United States and Texas.

So far as police jurisdiction is concerned, the evidence shows that the State of Texas has regularly

exercised its police jurisdiction in the area between the jetties, and that Louisiana residents from time to time arrested in the area east of the jetties have pleaded guilty to charges of fishing without a Texas permit, in the Texas courts. (See deposition of Louis M. Morris, Tx. Exh. III-1, OOO, PPP & QQQ.)

Moreover, as discussed earlier, maps drawn by Texas agencies have uniformly ended the boundary between Texas and Louisiana at the natural mouth of the Sabine River. This is also the case with respect to numerous maps drawn and constructed by various Louisiana agencies, many of whom were on conjunction with agencies of the federal government. (See Tx. Exh. A and F.) While some maps constructed by federal agencies show the boundary to extend to the end of the jetties, Texas has never acquiesced in this boundary; to the contrary, Texas, by its every action, has denied the existence of a boundary through the geographical middle of the jetties.

Clearly, none of the elements of acquiescence outlined by the Court have been shown to be controlling in the case of this seaward boundary, between the jetties or otherwise.

II.

THE SPECIAL MASTER ERRED IN HOLDING THAT THE LATERAL OFFSHORE BOUNDARY TO BE CONSTRUCTED BETWEEN THE STATES OF TEXAS AND LOUISIANA IS TO BE DETERMINED SOLELY BY AVULSIVE, MAN-MADE ADDITIONS TO THE SHORELINE.

As stated above, the primary issue the Master sought to resolve was whether the Geneva Convention applied to this boundary dispute. Setting aside for the moment the incorrectness of this premise, we now turn to his erroneous conclusion that the Geneva Convention applies and the result of his misapplication of the Convention.

A. The Provisions of the Geneva Convention are not Applicable to this Boundary Dispute Between Texas and Louisiana.

Texas does not dispute nor disagree with the propriety of this Court using the Geneva Convention to interpret those portions of the Submerged Lands Act which Congress intentionally left to the Court's interpretation when considering controversies under that Act.[20] However, this case is not a controversy arising pursuant to the Submerged Lands Act. It is simply a domestic boundary dispute between two states. The Special Master recognized that the Submerged Lands Act in no way affected lateral (or historical) boundaries of any coastal states (Special Master's Report, page 23). Nor have cases decided pursuant to the Submerged Lands Act affected the lateral offshore boundaries of adjoining coastal states. (See Texas Post-Trial Brief, pages 32 to 34.) The fact that this Court has decided to use the Geneva Convention where necessary to give effect to the provisions of the Submerged Lands Act does not per se transpose the legal basis for its use in those cases to boundary controversies unconnected with Submerged Lands Act grants.

[20] U.S. v. California, 381 U.S. 139, 150-160 (1965).

Also, the Master's determination that the Convention is applicable to future limitations of the Submerged Lands Act grants for Texas is at best only superficially correct. Future limitations of the Texas Submerged Lands grant governed by the Geneva Convention definition of coastline is only one element of such limitation. In measuring the Texas grant from either the 1845/49 shoreline or the modern, ambulatory shoreline, Texas does not and cannot use the west jetty. As succinctly stated by this Court in U.S. v. Louisiana:

> "It is true that last Term's decision that the three-league belt should be measured from the 1845 coastline and not from the edge of subsequently constructed jetties deprive Texas of the benefit of post-1845 accretion. It is also true that the use of the modern, ambulatory coastline as the baseline from which the limitation is measured will penalize Texas for post-1845 erosion . . ." 394 U.S. at page 5.

While the Texas coastline for measuring the Section 2(b) grant limitation may follow the Convention definition of ambulatory, it does not follow the Convention with regard to the utilization of the west jetty. Clearly the limitation based on the 1845/49 coastline has no relation to the Convention.

Texas believes that perhaps the main reason for the Master's conclusion that the Geneva Convention should apply lies in his statement at page 24:

> "Crucial to the disposition of the instant dispute, however, is the deter-

> mination of the coastline to be employed in the construction of the lateral boundary between Texas and Louisiana."

The "crucial" nature of the coastline really is whether the jetties should be used in constructing the lateral boundary. By finding that the same principle of the Geneva Convention has defined coastlines for Texas and Louisiana, the Master seeks to resolve the dispute concerning the use of the jetties by using this Geneva Convention defined coastline. However, as set out above, the Geneva Convention does not totally define the Texas coastline for the Submerged Lands Act grant purposes and where it is relevant, it is only partially applied since Texas does not use the west jetty. The Geneva Convention as applied to Texas and Louisiana for the Submerged Lands Act purposes in defining coastlines does not resolve the dispute as to whether both jetties should be included or disregarded as part of the coastline in constructing the lateral boundary.

B. Proper Application of the Geneva Convention Article 12, Compels the Conclusion that the Jetties Have No Role in Defining the Lateral Boundary.

Regardless of whether the use of the Geneva Convention is legally required or even desirable, application of the provision relevant to lateral offshore boundaries results in a clearly inequitable result and requires disregard of the jetties in constructing the lateral boundary between Texas and Louisiana.

Article 12 of the Geneva Convention provides that where two adjacent states are unable to agree on a lateral boundary, that in the absence of special circumstances, neither state may extend its boundary beyond a point which is at all points equidistant from the nearest point on the baselines used by the respective states to measure the breadth of their territorial sea. To apply Article 12 then requires substitution of the offshore area over which Texas and Louisiana exercise certain jurisdiction or ownership rights for the term "territorial sea". The breadth of Louisiana's grant of offshore jurisdiction or ownership rights is measured from the modern, ambulatory coastline as defined by the Convention including the use of the east jetty. 409 U.S. 17 (1972). This extends for three geographic miles. As discussed in (A), supra, measurement of the breadth of Texas' grant of offshore jurisdiction or ownership rights is made both from the historic 1845/49 coastline (minus the west jetty) and from the modern, ambulatory coastline with the exception that the west jetty is not utilized. There are then two baselines or coastlines by which Texas measures her offshore jurisdiction. Without attempting to resolve the question of which coastline would be used under the Convention, it is unquestioned that utilization of either excludes measurement by Texas from the west jetty. Application of the Convention literally or by analogy then results in the use of the east jetty but not the west jetty in constructing the median line--clearly an inequitable result.

This conclusion is strongly supported by the evidence produced at trial. As conceded by Dr.

Hodgson (Tr., page 647-657) a literal application of Article 12 to Texas and Louisiana would result in a closing line being drawn from the tip of the east jetty to the west bank of the Sabine as it existed in 1845/49, and a median line being constructed with its ending point being the midpoint of that closing line. Dr. Hodgson conceded that the median line would in all probability swing so far westward that it would again intersect the Texas coast, and conceded that such a line would be inequitable. The Special Master remarked that "we all agree that that would be an inequitable line." (Tr., page 958.)

Hodgson further conceded that in literally applying Article 12 to this situation, the inequity created by including the east jetty as part of the coastline, would require consideration of the east jetty as a "special circumstance", and that the accepted procedure under the Convention would then be to disregard the feature (the east jetty) which created this special circumstance, and draw a median line based upon the shorelines of both states, excluding both jetties. (Tr., pages 647-657.) This, of course, is the position that Texas has taken from the beginning, as evidenced by Texas Exhibit "DDD".

Richard Young, called as a witness by Texas, agreed with Dr. Hodgson's admission that a literal application of Article 12, as between Texas and Louisiana, would result in an inequitable line. He agreed that the solution to that inequity, under the Convention, would be to regard the east jetty as a "special circumstance", to then disregard it, and to construct a median line based upon the shorelines of both states, excluding both jetties. (Tr., page 955,

see also Tr., page 974.) Mr. Young also correctly stated that in view of the fact that the median line constructed on the present Louisiana and Texas shorelines of the two states would be at least three miles to the east of the tip of the east jetty, that the use of both jetties, would create an inequity, sufficient to require regarding both jetties as a "special circumstance" necessitating that they both be disregarded, and median lines be constructed from the shorelines excluding the jetties, as depicted on Texas Exhibit "DDD". (Tr., pages 980-981.)

Aaron Shalowitz, in his capacity as Special Assistant to the Director of the United States Coast & Geodetic Survey, viewed the existence of the jetties as a special circumstance, dictating that a median line be drawn from the historic shorelines of the two states. Shalowitz reasoned that such a line would have existed in contemplation of law long prior to the building of the jetties, and in any event, that the jetties would form a special circumstance which would preclude their use as part of the "baselines" for calculating the proper median line. (Tx. Exh. "YYY", pages 16-17, Shalowitz Memorandum.)

Dr. Lewis Alexander, the eminently qualified Chairman of the Department of Geography at the University of Rhode Island, testified by affidavit that the jetties should not be used in a coastline of this sort, and that a median line constructed on the shorelines, excluding the jetties, would be the appropriate lateral boundary. (Alexander Affidavit, Tx. Exh. "LLL"; Alexander Deposition, Tx. Exh. "LLL-1")

However, the Master chose to reject the interpretations of the application of Article 12 by admittedly qualified experts in the field of boundary and international law, Dr. Hodgson, Mr. Young, Dr. Alexander, and Mr. Shalowitz, and conclude that application of Article 12 does not result in the use of one jetty and not the other. (Special Master's Report, pages 44-45.) He further rejected the opinion of these experts that use of one jetty and not the other results in a special curcumstance which should be handled by disregarding both jetties in constructing the median line. The Master cites no law, no evidence, and no testimony which would compel the use of the jetties in a special circumstance situation rather than disregarding them.[21] He merely states:

> "To the extent the jetties are special circumstances in this case, they are to be included rather than ignored." (Special Master's Report, page 45.)

Texas submits that the expert testimony which is the best available interpretation of the special circumstances of the instant case compels the rejec-

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[21]The Special Master does cite the agreement between the United States and Florida to consider the jetties as part of the coast in United States v. Florida, No. 52 Original, as giving "support to the recommendation herein contained that justice and equity will be best served" by using the jetties in the instant controversy. (Special Master's Report, page 31.) However, Texas submits, that this is no support for the Master's position in light of the law and record of this litigation.

tion of both jetties in constructing the median line, lateral boundary in issue.

The Special Master, although holding that under the Geneva Convention the jetties are special circumstances as referred to in Article 12, has done no more than say the Geneva Convention does not resolve this boundary dispute other than to require the use of a median line gulfward of the end of the jetties[22]--a choice of line construction no longer actually disputed by the parties to this litigation. He has attempted to clothe his feeling that "equity" demands the use of both jetties with some legal basis. In fact, he has done no more than conclude that the boundary between Texas and Louisiana should be based on an avulsive addition to the shoreline of both states, the jetties. We now turn to our final discussion showing the impropriety of such method of resolving a boundary dispute.

C. Avulsive Additions to a Shoreline Such As Jetties Do Not Affect a Lateral Boundary.

The various documents defining and confirming the area and extent of Texas' and Louisiana's offshore lands all specify that such territory is bounded on the east by a line beginning at the mouth of the Sabine River.[23]

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[22]In fact, Article 12 authorizes the use of some method other than a median line to construct a lateral offshore boundary where special circumstances exist.

[23]See discussion, Point I.

Thus, whether the lateral boundary is viewed as having existed in contemplation of law since Texas' admission to the Union (an "inchoate" boundary), or whether some other view of that lateral extension is accepted, it is abundantly clear that the departure point for that lateral boundary has always been the "mouth" of the Sabine River. That mouth can no more be displaced seaward by the admittedly avulsive and unilateral action of the Corps of Engineers than it could be displaced east or west by avulsive changes in the course of the river. While the Master states that it "could be found" that the jetties have transported the mouth of the Sabine River to their gulfward terminus, (Special Master's Report, page 15), he, wisely, we believe, refrains from so holding.[24] Even Dr. Hodgson conceded that the action of the Corps in building the jetties was avulsive in nature. (Tr., pages 622-623.)

Our case law has consistently held, as stated at the outset of this brief, that no change of boundary results from avulsive changes in a river, whether caused by natural or artificial means.

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[24] However, the Master does state that, while the 1836 Boundary Act of the Republic of Texas contains no specific lateral boundary description, such absence is only "from the mouth of the Sabine Gulfward" (Special Master's Report, page 37.) This statement implicitly recognizes that at the very least the beginning point for the offshore lateral boundary is obviously contained in the historical documents regarding the boundary between two states. Yet the Master continued to reject any reliance on such documents for direction.

Nebraska v. Iowa, supra; Washington v. Oregon, supra; Arkansas v. Tennessee, supra; Minnesota v. Wisconsin, supra; Durfee v. Duke, supra; James v. State, 72 S.E. 600 (C.A. Georgia, 1911); Whiteside v. Norton, 205 F. 5 (8th Cir. 1913), cert. denied 232 U.S. 726 (1913); Stowe v. United States, 71 F.2d 826 (8th Cir. 1932).

An avulsive change can result from either natural or artificial actions. Examples of artificial avulsive changes include the diversion of the main channel of the Savannah River from the South Carolina side of the river to the Georgia side by the building of a series of dikes by the United States government for the purpose of improving navigation. James v. State, supra. An avulsive change occurred in the St. Louis River by the dredging of a channel in that river by the United States government to improve navigation which had the effect of changing the main navigable channel. Whiteside v. Norton, supra; Minnesota v. Wisconsin, supra. The courts have consistently held in these cases that where the dredging of channels or building of dikes for navigational improvement by the United States government has occurred, a boundary change is not effected since these changes are avulsive in nature.

In James v. State, supra, the building of the dikes changed the main navigable channel of the river. However, the court held that the boundary between South Carolina and Georgia was fixed at the current or main thread of the channel of the Savannah River by the Treaty of Bufort in 1878. Subsequent changing of the main channel through avulsive means could not alter the boundary between the two states.

The alteration in the main navigable channel caused by dredging of a deeper channel by the United States government in the St. Louis River was also held not to affect the boundary between the state of Minnesota and Wisconsin. As stated by the Eighth Circuit in Whiteside v. Norton, supra, and by the Supreme Court in Minnesota v. Wisconsin, supra, the boundary line between the states must be ascertained upon a consideration of the situation existing at the time the states entered the union and that the main channel at that time would be the boundary, regardless of navigational improvements altering the present location of the main navigational channel.

Given the controlling law of this nation, the jetties, avulsive additions to the shorelines of Texas and Louisiana have no effect on and no place in the determination of the lateral offshore boundary between the two states.

CONCLUSION

For the foregoing reasons, the State of Texas prays that the Report of the Special Master be in all things adopted and approved as the judgment of the Court, except for a determination that the lateral boundary in the Gulf of Mexico between the States of Texas and Louisiana and between the State of Texas and the United States of America be established as a median line, based upon the historic 1845/49 shoreline of the States of Texas and Louisiana.

Respectfully submitted,

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May 1975

CERTIFICATE OF SERVICE

I, Elizabeth Levatino, First Special Assistant Attorney General of the State of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 28 day of May, 1975, I served copies of the foregoing Acceptance of the State of Texas To The Report of the Special Master With Two Exceptions, by transmitting conformed copies of the same by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Louisiana, and upon the Solicitor General of the United States, and also upon the City of Port Arthur, Texas, through its City Attorney.

Elizabeth Levatino

ELIZABETH LEVATINO

Supreme Court, U. S.
FILED
MAY 27 1975
MICHAEL RODAK, JR., CLERK

No. 36, Original

In the Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,
Plaintiff,

v.

THE STATE OF LOUISIANA,
Defendant,

UNITED STATES OF AMERICA,
Intervenor,

CITY OF PORT ARTHUR, TEXAS,
Intervenor.

ACCEPTANCE BY THE STATE OF LOUISIANA OF THE REPORT OF THE SPECIAL MASTER, WITH ONE EXCEPTION

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ACCEPTANCE BY LOUISIANA OF THE SPECIAL MASTER'S REPORT, WITH ONE EXCEPTION, AND SUMMARY OF REASONS FOR EXCEPTION

Page

I. Louisiana accepts the Special Master's Report, with one exception 1

II. Louisiana excepts to that portion of the Special Master's Report which marks the boundary line between Texas and Louisiana through the geographic middle of the Middle Pass as Sabine River enters Sabine Lake, instead of in the geographic middle of the West Pass, thereby placing land admittedly in the State of Louisiana and on which taxes are presently being paid to Louisiana, in the State of Texas, for the following reasons:

(a) Louisiana's exception does not involve any disputed issues of fact, but relates solely to the misapplication of the law previously established by the Court in this case that the navigable channel is not to be considered in establishing the boundary 2

(b) The Special Master, in establishing the boundary in the excepted area, used the Middle Pass instead of the West Pass, on the west bank of which the Boundary Commission established the boundary between the Republic of Texas and the United States in 1840. The Act of 1848 moved Texas' boundary to the middle of West Pass 6

(c) The Special Master recognized that the boundary established by him in the ex-

cepted area places in Texas lands admittedly in Louisiana and on which taxes are presently being paid to Louisiana as evidenced by the following findings:

1. "Texas makes no claim to the three islands at the north end of Sabine Lake, perhaps because all three were originally selected by Louisiana under the Swamp Lands Grants of 1849 (9 Stat. 352), and 1850 (9 Stat. 519). The State of Louisiana subsequently patented these islands to individuals who now hold title thereto." (Report of Special Master, page 4) 10

2. " . . . . . Louisiana received a patent from the United States to the three islands in the north part of the lake, including Sabine Island, and later patented or deeded these islands to private parties; . . . . ." (Report of Special Master, p. 17).....10

3. "As to the three islands at the north end of the lake, some of which are west of the geographic middle of the Sabine River, the United States now makes no claim, perhaps because it relinquished title to these islands to the State of Louisiana under the Swamp Lands Act (See Louisiana Exhibit EEE.)." (Report of Special Master, p. 16).....11

(d) The location of the boundary in the excepted area by the Special Master dispossesses Louisiana of title to navigable

channels between the islands vested in Louisiana by virtue of its sovereignty 13

(e) No question of acquiescence is involved....14

III. Conclusion 15

IV. Certificate 16

CITATIONS

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Cases:

Texas v. Louisiana, 410 U.S. 702, 93 S.Ct. 1215, 35 L.Ed. 646 (1973); reh. den. 411 U.S. 988, 93 S.Ct. 2266 (1973) 3

United States v. Holt State Bank, 270 U.S. 49, 46 S.Ct. 197, 70 L.Ed. 465 (1925) 13

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Miscellaneous:

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Louisiana Exhibit EEE-4 13

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United States Exhibit KKK 12

No. 36, Original

In the Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,
Plaintiff,

v.

THE STATE OF LOUISIANA,
Defendant,

UNITED STATES OF AMERICA,
Intervenor,

CITY OF PORT ARTHUR, TEXAS,
Intervenor.

ACCEPTANCE BY THE STATE OF LOUISIANA OF THE REPORT OF THE SPECIAL MASTER, WITH ONE EXCEPTION

OPENING STATEMENT

The report of Judge Robert Van Pelt, Special Master, has been filed with the Court pursuant to an order entered on April 14, 1975, ordering the report filed and giving all parties until May 29, 1975 to file exceptions to the report, with supporting briefs, and until June 30, 1975, to file reply briefs, if any, to such exceptions. The State of Louisiana (Louisiana), Defendant, accepts and urges approval of the report, subject to one exception herein stated.

EXCEPTION

LOUISIANA EXCEPTS ONLY TO THAT PORTION OF THE SPECIAL MASTER'S REPORT WHICH MARKS THE BOUNDARY LINE BETWEEN TEXAS AND LOUISIANA THROUGH THE GEOGRAPHIC MIDDLE OF THE MIDDLE PASS AS SABINE RIVER ENTERS SABINE LAKE, INSTEAD OF IN THE GEOGRAPHIC MIDDLE OF THE WEST PASS, THEREBY PLACING LAND ADMITTEDLY IN THE STATE OF LOUISIANA AND ON WHICH TAXES ARE PRESENTLY BEING PAID TO LOUISIANA, IN THE STATE OF TEXAS.

In accepting the Special Master's (Master) report, except as to this one exception, Louisiana reserves the right to answer exceptions, if any, taken to the report by the State of Texas (Texas), the United States, or the City of Port Arthur, Texas.

This exception only involves a very small segment of the total boundary between Texas and Louisiana and does not involve any disputed fact issue. The facts on which Louisiana relies are undisputed and were so found by the Master.

The Court will recall from a prior consideration of this case that when the Republic of Texas was admitted into the Union in 1845 as "Texas", its eastern boundary was on the west bank of the Sabine River.

> "The United States renewed its efforts to acquire Texas, and when Mexico declared its independence from Spain in 1821, the United States began negotiating anew for the purchase of Texas. In the Treaty of Limits, 1828, 8 Stat. 372, the United States and Mexico recognized the boundary 'be-

> tween the two countries,' id., at 374, on the west bank of the Sabine as established in the 1819 treaty with Spain. Texas declared its independence from Mexico in 1836, 1 Laws, Republic of Texas, 3-7, in Gammel's Laws of Texas 1822-1897, was recognized as an independent nation by the United States in 1837, Cong. Globe, 24th Cong., 2d Sess., 83, 270, and in 1838 the Sabine boundary agreed upon with Spain in 1819, and with Mexico in 1828, was adopted by the United States and Texas, 8 Stat. 511. The Sabine boundary remained unchanged when Texas was admitted as a State in 1845, 9 Stat. 108." [1]

The Court then concluded "that the western boundary of Louisiana is the geographical middle of the Sabine River, not its western bank or the *middle of its main channel.*" (Emphasis Ours) 410 U.S. 707. Having reached this conclusion, the Court found Texas' eastern boundary was extended to the geographic middle of the Sabine River, Sabine Lake and Sabine Pass in 1848 to coincide with Louisiana's western boundary.

> "The Special Master was also correct in ruling that the United States intended the geographic middle of the river, not of the main channel, or thalweg, to be the western boundary of the State. The argument that the middle of the main channel was intended rests on the line of cases in this Court beginning with Iowa v. Illinois, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55 (1893), which hold that in normal circumstances it should be assumed Congress intends the word 'middle'; to mean 'middle of the main channel' in order that each State would have equal access to the main navigable channel." (410 U.S. 709)

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[1] *Texas v. Louisiana*, 410 U.S. 702, 705, 93 S.Ct. 1215, 1217, 35 L.Ed. 646 (1973); reh. den. 411 U.S. 988, 93 S.Ct. 2266 (1973).

The Court, therefore, made it clear the question of *navigation* was *not* involved in locating the boundary.

When the boundary between the Republic of Texas and the United States was surveyed in 1840, it was located on the west bank of the west channel of Sabine River as it enters Sabine Lake.

In the Journal of the Joint Commission for surveying the boundary between the United States and Texas (1840), in describing the boundary in the area in dispute, the Commissioner stated:

> "May 22-Continued the demarcation along the western shore of the lake, crossing the mouth of Crane Bayou; thence to the entrance of the river Neches, into the lake; thence across the mouth of that river, immediately above the little island in the lake designated on the plan of the Sabine river and lake by the name of Jones's island; thence west of said island, around the peninsula formed by the projection of the point of land between the Neches and Alligator cove; thence around the cove and western borders of the lake, as delineated on the plan or map; thence around Point Young, *along the western pass by which the river Sabine enters the lake*; thence *northeasterly along the western bank of the river Sabine*, traversing the mouths of Cow Bayou and Adams' bayou, and around the promontory designated as Horse-shoe bend; thence north westerly to Huntly, situated at Green's bluff."[2] (Emphasis ours)

West Pass is shown on the plat of survey attached to the Commission's report, an excerpt of which follows:

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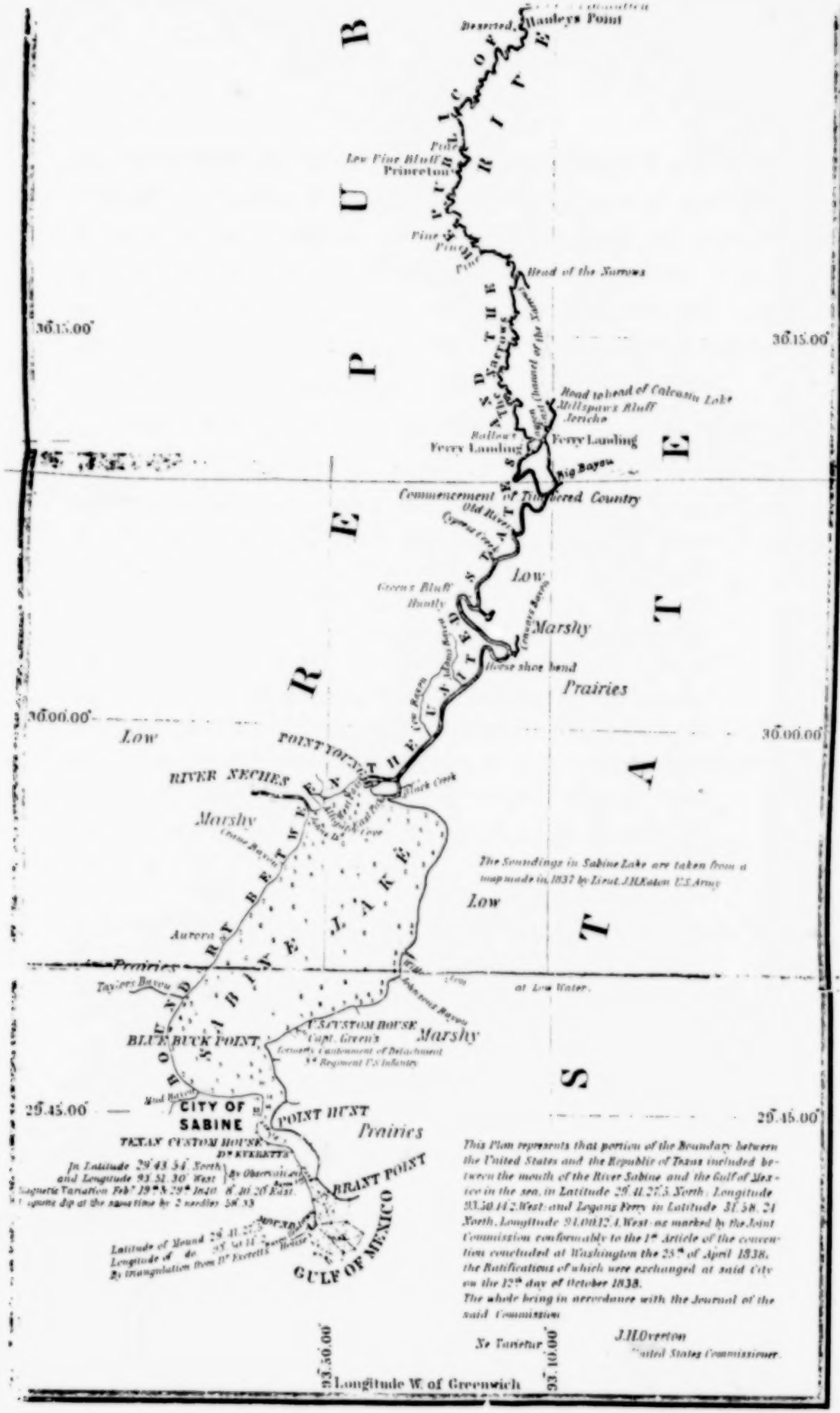
[2] Louisiana Exhibit A, Item 14, p. 224-225.


Beacon, Hanleys Point
Low Pine Bluff
Princeton
Head of the Narrows
Head to head of Calcasieu Lake
Millspaws Bluff
Jericho
Ferry Landing
Ferry Landing
Big Bayou
Commencement of Timbered Country
Low
Marshy
Prairies
Low
POINT TORTAHUE
RIVER NECHES
Marshy
Aurora
Prairies
Low
at Low Water.
U.S. CUSTOM HOUSE
Capt. Green's
Marshy
BLUE BUCK POINT.
CITY OF SABINE
POINT HUNT
Prairies
TEXAN CUSTOM HOUSE
Dr KERR'S
BRANT POINT
GULF OF MEXICO
30.15.00
30.00.00
29.45.00
93.50.00
93.40.00
Longitude W. of Greenwich
The Soundings in Sabine Lake are taken from a map made in 1837 by Lieut. J.H.Eaton U.S.Army
This Plan represents that portion of the Boundary between the United States and the Republic of Texas included between the mouth of the River Sabine and the Gulf of Mexico in the sea, in Latitude 29° 41' 27".5 North, Longitude 93.50 14.2 West; and Logans Ferry in Latitude 31.58. 21 North, Longitude 94.00 12.4 West, as marked by the Joint Commission conformably to the 1st Article of the convention concluded at Washington the 25th of April 1838, the Ratifications of which were exchanged at said City on the 12th day of October 1838.
The whole being in accordance with the Journal of the said Commission
Se Tarletar
J.H.Overton
United States Commissioner.

The Master erred in considering navigation as the criteria to locate the boundary in the middle channel where the Sabine River enters Sabine Lake instead of using the channel of the Sabine River which was used in locating the boundary by the Commission in 1840. This is contrary to the ruling of this Court in rejecting the "thalweg doctrine" in the original hearing on the recommendation of the Master. In discussing this issue the Master said:

> "An examination of these two exhibits shows that in 1840 there were two chief channels where the Sabine River entered Sabine Lake. One is on the east side of the largest island in the area and the other channel is on the west side of that island. This island, as has been noted, is sometimes called Shell Island and other times called Sabine Island. Soundings noted on these exhibits indicate both passes were 24 feet in depth in the area of Sabine Island whereas farther out in the lake in this area the depth was only three or four feet. One pass is named and marked on this 1840 map as the east pass and one is named and marked as the west pass. On later maps the pass marked east pass on the 1840 map is called middle pass and the eastmost pass which is unmarked on the 1840 map is called the east pass. Aerial photographs of the area, in evidence as Louisiana Exhibit X-1 and X-2, show clearly the three islands at the north end of the lake and the channels by which the Sabine flows into the lake. Your Special Master believes these aerial photographs support the recommendation hereafter made as to the pass to be used in determining the State Boundary." (Report of the Special Master, page 9).

The plat referred to by the Master was in error in

designating the middle pass as the East Pass. This can be seen by copy of a portion of the plat attached to the Commission's report set out previously in this brief. That plat shows three islands with the westernmost pass designated as West Pass and the easternmost pass designated as East Pass and with no name for the middle pass.

The Master recognized, as he must, the existence of the West Pass, but used the Middle Pass because he determined it carried more water than the West Pass. Here again, the Master was considering the size of the pass *instead of using the channel of the Sabine as it entered the Lake, on the west bank of which was located the boundary between Texas and the United States when Texas was admitted into the Union in 1845.* In 1848 the boundary was moved to the geographic middle of West Pass to coincide with the boundary of Louisiana. It was not moved to another pass or channel so as to deprive Louisiana of land already recognized as belonging to Louisiana.

When this same issue arose in a prior dispute between Texas and Louisiana, at another location along the boundary, it was settled by the Department of Interior that the boundary between Texas and Louisiana followed the westernmost channel.[3]

Texas patented land on an island between the two channels of Sabine River at the "Narrows", as did Louisiana. Texas had retained title to all unappropriated

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[3] Texas Exhibit B, Item 1.

public land when it was admitted as a State of the Union in 1845.[4]

The question of the "Narrows" was finally submitted to the Secretary of the Interior, General Land Office, for his decision. The basic question was a determination of which channel of the Sabine was used in fixing the western boundary in the Treaty of 1819, which was later surveyed in 1840-41. It was held that the islands in Sabine River, at the point known as the "Narrows" had passed to Louisiana from the United States under its Swamp Lands Grants.[5] The west bank of the western channel of the River at this point was recognized as the boundary between Louisiana and Texas and the Master recognized this decision in his original Report.[6] Obviously, this case decided and held that the lands claimed by Texas were, in fact, in Louisiana. The Texas patents were then cancelled, as so testified by Mr. Ray Wisdom.[7]

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[4] 9 U.S. Stat. 108

[5] See: Texas Exhibit B, Items 1 and 6. Also Louisiana Exhibit EEE, Items 2-17.

[6] Appendix D(d), Report of Special Master, which reads: "(D.) 1932. Texas' Exhibit B, pp. 46-49. On March 1, 1932, the Acting Assistant Commissioner of the U. S. General Land Office wrote a letter to a Louisiana title company in response to questions about the water boundary between Texas and Louisiana. After outlining the history of the Sabine boundary between the two States, the Commissioner made reference to an earlier controversy over islands in Sabine River where it was held that for purposes of the island question, 'the *west bank of the western channel of the river at this point will be recognized as the boundary between the States of Louisiana and Texas.' The Commissioner then stated: 'This would appear to fix the boundary line through Sabine Lake, no differentiation between the river and the lake having appeared in any of the treaties or acts of Congress, supra'* " (Emphasis ours).

[7] Transcript (June 10, 1971), p. 572.

Mr. Frank Pierce, First Assistant Secretary, Commissioner of the Federal Land Office, in his opinion dated June 27, 1910, stated:

> "In the absence of any term limiting or restricting the boundary to a particular channel of the river, *the limits described would extend, by the plain language of the statute, to the farthest or western channel of the river*, even if the other descriptive term, 'including all islands,' had been omitted; but when considered together *those terms of description indicate with absolute certainty that the western boundary of the state is the farthest western branch or channel through which any part of the waters of the Sabine* River may naturally flow." (Emphasis Ours) [8]

This portion of the boundary has been recognized and stipulated to by the parties in this litigation.[9]

Texas does not dispute that the lands to the westernmost channel of the Sabine as it enters Sabine Lake were surveyed in 1838 and recognized in Louisiana by the United States Deputy Surveyor and patented to Louisiana[10] under the Swamp Lands Act.[11] Louisiana later issued patents transferring these lands to various individuals.

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[8] Texas Exhibit B, Item 1, p. 3.

[9] Texas Exhibit AAA 1-12.

[10] When Louisiana was admitted into the Union in 1812, title to all undisposed land was retained by the United States except the beds of navigable streams. The United States then surveyed all unappropriated lands in Louisiana. All titles to these lands emanated first from the Federal Government. This is the reason that this area in question was surveyed, platted, and transferred by the United States to Louisiana under the respective Swamp Lands Act.

[11] Louisiana Exhibit EEE, Items 2-17; Transcript (May 20, 1974), pp. 31-32.

The Master recognized this fact when he stated:

> "Texas makes no claim to the three islands at the north end of Sabine Lake, perhaps because all three were originally selected by Louisiana under the Swamp Lands Grants of 1849 (9 Stat. 352), and 1850 (9 Stat. 519). The State of Louisiana subsequently patented these islands to individuals who now hold title thereto." (Report, p. 4)
>
> * * * *
>
> ". . . Louisiana received a patent from the United States to the three islands in the north part of the lake, including Sabine Island, and later patented or deeded these islands to private parties; . . ." (Report of Special Master, p. 17).

These lands are still being assessed to the same individuals or their successors in title as located in the Parish of Cameron, Louisiana, and taxes are currently being paid to the Parish of Cameron.[12] No evidence was introduced by Texas that the lands are assessed in Texas or that taxes were ever paid to Texas on the lands. Texas argues that, even though the lands are in Louisiana, nevertheless the boundary between Texas and Louisiana is in Middle Pass rather than the middle of the most westerly pass. There is no basis in law or fact for this contention.

The most conclusive evidence that these lands were never in or a part of Texas is the withdrawal by the United States of its claim thereto in this suit. In the United States' Motion for Leave to Intervene (Paragraphs III and V) it claimed ownership of these lands at

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[12] Louisiana Exhibit EEE, Items 20 and 21.

the north end of Sabine Lake where Sabine River enters it. After additional investigation, the United States subsequently withdrew its claim, conceding that these lands had been patented to Louisiana under various Swamp Lands Acts. The Master also recognized this fact in his Report:

> "As to the three islands at the north end of the lake, some of which are west of the geographic middle of the Sabine River, the United States now makes no claim, perhaps because it relinquished title to these islands to the State of Louisiana under the Swamp Lands Act (See Louisiana Exhibit EEE.)." (Report of Special Master, p. 16)

Louisiana introduced evidence which establishes that the U. S. Corps of Engineers treated the lands to the east bank of the west channel as in Louisiana as late as 1944.[13] Louisiana Exhibit GGG confirms that in 1900 West Pass of the Sabine River as it enters Sabine Lake was the navigable channel prior to the construction of the ship channel.[14]

The first ship channel was initially surveyed by the U. S. Corps of Engineers as entering the west channel, but was later changed to enter a small branch of Middle Pass and thereby partially obliterated the west channel with fill.[15] The channel was partially constructed under a

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[13] Louisiana Exhibits HHH and EEE-18

[14] Louisiana Exhibit GGG is dated January, 1901, but based on Corps of Engineers surveys from 1874 to June, 1900.

[15] See: Louisiana Exhibit FFF, p. 19 where it is stated: "As connection is made with the west branch of the Sabine River, the main stream would still carry most of the sediment into the lake as heretofore, but all silt from the Neches River would be carried into

right of way acquired by the Corps of Engineers from individuals who recited that the land was located in Cameron Parish, Louisiana.[16]

Even if navigation is a factor, although the Court has held it is not, United States Exhibits FFF and HHH and Louisiana Exhibits GGG and FFF[17] based on U. S. Coast and Geodetic Survey Chart No. 517 show conclusively that, in early 1900, at least, the main or deepwater channel of the Sabine River was the *westernmost channel* as the river entered Sabine Lake. The 6-foot depth contour in the lake goes up into the westernmost pass, not Middle Pass or the other passes to the east.

It was not until the 25-foot deep Sabine-Neches Canal was completed (see U.S. Exhibit KKK) that the westernmost pass shoaled up. The Sabine-Neches Canal entered the river at the small pass referred to by Thomas Bilbo, U. S. Deputy Surveyor (who surveyed and mapped this area in the fourth quarter of 1838), as 3rd West Fork [see Louisiana Exhibit EEE, Item 18 ("Map of Sabine-Neches Waterway, Texas," August, 1944, Plat No. 4 of House Document No. 571, 79th Congress, 2nd Session) and shown on this exhibit as West Pass between Middle Pass and Little West Pass], the latter being the westernmost pass identified by Bilbo on Township Plat 12 South, Range 15 West, as 2nd Fork. The route chosen for the canal offered better alignment for navigation by ocean-going vessels. Historically, the

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the dredged channel and would probably be deposited in the channel." Also, Transcript (May 20, 1974), pp. 135-136.

[16] Louisiana Exhibit EEE-19.

[17] Transcript (May 20, 1974), pp. 121-124.

westernmost pass was most used for navigation until completion of the Sabine-Neches Canal in May, 1908, later deepened for ship navigation, as shown on all of the U. S. Coast and Geodetic Charts Nos. 203 and 517 prior to 1908.

When the lands in dispute were surveyed in 1838 by Mr. Bilbo, he located the three islands in the head of the Sabine as being in Louisiana. He noted that the channels of the Sabine entering the north end of Sabine Lake were all navigable. This survey by Mr. Bilbo was recognized by the United States. The United States then patented the lands to Louisiana under the Swamp Lands Act.[18] By determining that the channels were navigable, Louisiana acquired the beds of the passes to the center of the West Pass by virtue of its sovereignty.

This Court stated in *United States v. Holt State Bank*, 270 U.S. 49, 54, 46 S.Ct. 197, 198, 70 L Ed. 465 (1925) as follows:

> "It is settled law in this country that lands underlying navigable waters within a state belong to the state in its sovereign capacity and may be used and disposed of as it may elect, subject to the paramount power of Congress to control such wa-

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[18] Louisiana's Exhibits EEE-4 and EEE-11 (U. S. government township plats covering Townships 12 South, Ranges 14 and 15 West and 13 South, Ranges 14 and 15 West), respectively, show that Thomas Bilbo excluded the four passes of Sabine River forming the three islands as navigable watercourses belonging to Louisiana by virtue of inherent sovereignty. Consequently, when Texas was granted permission to extend its eastern boundary to the middle of the Sabine River, Texas could move no farther east than the middle of 2nd West Fork (Louisiana Exhibits EEE-4 and EEE-18 where 2nd West Fork is shown as Little West Pass).

ters for the purposes of navigation in commerce among the states. . ."

There is no dispute that the islands were located as in Louisiana and that Mr. Bilbo determined that the channels were navigable. There is no evidence to establish that Louisiana divested itself of title to the beds of these navigable channels of the Sabine as it enters Sabine Lake. The only issue in this case has been whether Louisiana's boundary was on the west bank of the Sabine. This Court has held that the boundary between Texas and Louisiana is in the geographic middle of the Sabine. This means that Texas' boundary in 1848 was moved to include only the *west* half of the *westernmost* channel to coincide with the boundary of Louisiana. There is no question of acquiescence in this excepted area.

CONCLUSION

Louisiana respectfully suggests that the Special Master's report be accepted except for that portion fixing the boundary in the geographic middle of Middle Pass as Sabine River enters Sabine Lake and as to this portion of the boundary Louisiana urges that it should be established in the geographic middle of the westernmost pass of the Sabine River as it entered Sabine Lake, prior to the dredging of the ship channel, as shown on Louisiana Exhibit DDD.

Respectfully submitted,

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CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23 day of May, 1975, I served copies of the foregoing Acceptance By The State of Louisiana of the Report of the Special Master, with One Exception, by transmitting conformed copies of the same by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General and Attorney General of the United States, and the City of Port Arthur, Texas, through its City Attorney.

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By: _____
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B-5109, 5-75

Supreme Court, U. S.
FILED
JUN 27 1975
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No. 36, Original

In the Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,
Plaintiff,

v.

THE STATE OF LOUISIANA,
Defendant,

UNITED STATES OF AMERICA,
Intervenor,

CITY OF PORT ARTHUR, TEXAS,
Intervenor.

REPLY MEMORANDUM FOR THE STATE OF LOUISIANA

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In the Supreme Court of the United States

OCTOBER TERM, 1969

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Plaintiff,

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Defendant,

UNITED STATES OF AMERICA,
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CITY OF PORT ARTHUR, TEXAS,
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REPLY MEMORANDUM FOR THE STATE OF LOUISIANA

I.

OPENING STATEMENT

The present memorandum is entirely devoted to answering the points raised by the State of Texas' (Texas) two exceptions to the Special Master's (Master) report, and the memorandum in support thereof.

Texas has not answered the exception of the State of Louisiana (Louisiana), and we will not repeat our argument in support thereof in this memorandum.

The Master's report set out succinctly the present

status of this litigation and the issues referred to him, which are answered in his report to the Court.[1]

> "The issues as submitted and discussed in this report can be better understood if separated into five categories:
>
> a) The determination of the geographic middle of the Sabine River from 32° to 30° north latitude. Roughly this is a line beginning on the north at the point where the thirty-second parallel crosses the Sabine River and continuing generally in a southerly direction to where the Sabine River enters Sabine Lake. This is approximately the point where the thirtieth parallel crosses the river. Texas and Louisiana are in agreement as to this portion of the boundary, subject to your approval. The United States of America and the City of Port Arthur have no interest in this boundary and in this part of the controversy.
>
> (b) The determination of which of three passes is to be used in marking the geographic middle of the Sabine River where it enters Sabine Lake.
>
> c) The location of the geographic middle of Sabine Lake, Sabine Pass, and of the jetties constructed into the Gulf of Mexico in event it is concluded that the jetties form part of the baseline or mark the extension of the Sabine River into the Gulf.

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[1] In this litigation the Master filed an earlier report which has already been considered by the Court. (410 U.S. 702) We will refer to that report in this memorandum as the first report, all other references to the report refer to the report now being considered by the Court.

d) Whether or not the island designated historically and by the parties herein as 'Sam' was in existence when Louisiana was admitted as a State in 1812; whether it existed at the time of the construction of the Sabine-Neches Canal[2] by the U. S. Corps of Engineers in approximately 1906-08; whether the United States has proven its claimed ownership of such island.

e) The lateral boundary line between the States of Texas and Louisiana, and between the State of Texas and the United States in the Gulf of Mexico and the principles to be applied in determining such lateral boundary line. This is the issue covered by the order of reference of October 15, 1973.

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[2] This canal, or portions thereof, does not bear the same name on all exhibits. It, or portions thereof, is variously designated Port Arthur Canal, Intracoastal Waterway, Sabine-Neches Canal and Sabine-Neches Ship Canal, among others. In this report I will use the term Sabine-Neches Canal." (Report, pp. 4-5).

Texas' exceptions to the Master's report relates to issues (c) and (e). There is no contest over issue (a). Louisiana's exception relates to issue (b). Louisiana makes no exception to the Master's determination of issue (d).

A. Acquiescence and Prescription

Texas, in its opening statement, recognized the necessity of having the Court overrule the following findings of fact by the Master if it is to be successful.

"Your Special Master concludes, under the

> law of prescription and acquiescence[6] that this boundary has been sufficiently recognized by each State, whereby the boundary between the States of Louisiana and Texas should be determined to be the geographic middle of the two jetties as they extend into the Gulf of Mexico as that geographic middle has been determined and marked upon Louisiana Exhibit DDD. This line bears the legend 'Approximate Boundary Louisiana-Texas Jetty Channel.'

[6] For a discussion of the law of prescription and acquiescence see Original Report of Special Master beginning on page 27." (Report, p. 14)

To reach the merits of the two exceptions taken by Texas, the Court must disregard the jetties. Texas does not question the correctness of the marginal lateral boundary in the Gulf as found by the Master, if the jetties are considered.

Following Texas memorandum, we will discuss the use of the jetties before discussing the specific exceptions taken by Texas.

In an effort to de-emphasize this critical issue, Texas in footnote (1) on page 3 of its memorandum, states:

> ". . . The Master does not favor the Court or the parties hereto with any citation, authorities for this proposition. . ."

Texas must be familiar with Note 6, page 14 of the Master's report which states:

> "For a discussion of the law of prescription and acquiescence see Original Report of Special Master beginning on page 27." [2]

[2] The Master in his first report devoted pages 27-30 to a discussion of prescription and acquiescence.

Texas, in the first hearings, urged the boundary between Louisiana and Texas from the mouth of the Sabine River in the Gulf of Mexico to 32° north latitude was in the geographic middle of the Sabine by virtue of prescription and acquiescence.

Texas, also in its reply brief before the Master in the first hearing, devoted pages 31 through 51 to a discussion of its plea of acquiescence and prescription and, in summary, on page 51 of said brief, stated:

> "The following language from the Court's opinion in *Louisiana v. Mississippi*, supra, is applicable here:
>
> > 'The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive. . . .' (at page 53).
>
> That this prescription and acquiescence to the geographic middle prevails over any claim Louisiana may assert to a thalweg middle is shown in the Supreme Court's decision in *Arkansas v. Tennessee*, 310 U.S. 563."

It was on the basis of this argument and the authorities cited by Texas, including the case of *Michigan v. Wisconsin*, 270 U.S. 295, 305 (1926) and *Louisiana v. Mississippi*, 202 U.S. 1, 56-57 (1906) that the Master determined:

> "All this leads your Special Master to conclude and to report that Texas by reason of the Doctrine of Acquiescence and Prescription has further es-

tablished its claim to the west one-half of the Sabine River." (First Report, p. 30)

Texas argued the doctrine of acquiescence and prescription before the Court, but the Court said:

> "The Special Master also concluded that even if he was in error in rejecting Louisiana's claim with respect to the original location of her western boundary, Texas must still prevail by reason of prescription and acquiescence. Because we are satisfied with our conclusion, already reached, with respect to the boundary location, we need not pass upon this aspect of the Special Master's Report, although we note that the facts relied upon by him are consistent with and support the other ground for his conclusion as to Louisiana's Sabine boundary." [3]

How can Texas now seriously argue that the Master failed to favor the Court or counsel with citations of authorities sustaining his findings of acquiescence and prescription.

In making his findings of fact on acquiescence and prescription the Master considered extensive evidence introduced by Texas and Louisiana.

Louisiana introduced as Exhibit WWW 1-10 a number of affidavits starting with that of Captain Bernett W. Jardell, a Captain in charge of the Enforcement Division of Louisiana Wild Life and Fisheries Commission in Southwest Louisiana. The affidavit of Captain Jardell establishes that Louisiana has en-

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[3] *Texas v. Louisiana*, 93 S.Ct. 1215, 1220, 410 U.S. 702, 712, 35 L.Ed.2d 646; reh. den. 93 S.Ct. 2266 (1973).

forced its game and fishing laws in the east half of Sabine Pass as extended by the jetties and that Texas enforced its game and fishing laws in the west half of Sabine Pass, as extended by the jetties, to at least, the gulfward end of the jetties.

The testimony of Captain Jardell is affirmed by that of Lieutenant Arnold Rutherford of the Enforcement Division of Louisiana Wild Life and Fisheries Commission whose affidavit was introduced as Louisiana Exhibit WWW-2, and the affidavit of Norman Cheramie, a shrimper, who lives in Cameron, and whose affidavit was introduced as Louisiana Exhibit WWW-3. This is likewise true of the affidavits of Rene Terrebonne, Patrick Cheramie, Joseph A. Racca and Henry Woodgett, all residents of Cameron Parish and all having been engaged in the shrimping industry in the Gulf of Mexico for many years.[4]

This same testimony is confirmed by three residents of Texas who reside at Sabine Pass, who stated that they have acquired Louisiana shrimping licenses and other fishing licenses to fish and shrimp in the east half of Sabine Pass, as extended by the jetties, to the gulfward end of the jetties.[5]

Albert Bossley, of Sabine Pass, operates the A & B Bait Company at Sabine Pass, Texas, and stated that he has considered the center line of the Sabine Pass, as extended by the jetties to their gulfward terminus, as the boundary between Texas and Louisiana. He was

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[4] Louisiana Exhibit WWW 4-7.

[5] Louisiana Exhibit WWW 8-10.

not aware that any enforcement officers of the Texas Parks and Wild Life Commission had ever enforced fishing and game laws east of the center line of Sabine to, at least, the gulfward end of the jetties. It is most important for these Texas shrimpers to be able to fish in the east half of Sabine Lake and Pass, as extended by the jetties, because the majority of their bait shrimp are "brownies" and Texas prohibits such shrimping in the west half of Sabine Lake and Pass, as extended by the jetties.

On the original trial of this case, the affidavit of Mr. Robert L. Cross was introduced. He stated he was State Law Enforcement Coordinator of the Texas Parks and Wildlife Department from November 1, 1958 to October 1, 1969.[6] He stated that Texas enforced its game and fishing laws in the *west* half of Sabine Lake and Sabine Pass and Louisiana enforced its game and fishing laws in the *east* half of Sabine Lake and Sabine Pass.

Texas furnished Louisiana numerous regulations concerning the enforcement of the game and fishing laws in Sabine Lake and Sabine Pass and these rules show that Texas enforced its game and fishing laws only in the west half of Sabine Pass and Sabine Lake, as extended by the jetties.[7]

Texas offered in evidence the affidavit of Mr. Lewis M. Morris, dated March 18, 1974, who stated "During all of the years that I was Director of En-

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[6] Texas Exhibit B, Item 9.

[7] Louisiana Exhibit XXX.

forcement of the Jefferson County Office of Parks & Wildlife Division, the same being from 1945 through 1965, our enforcement procedures followed a handbook issued by the Austin Office of our Agency." [8] He then stated that he enforced the game and fishing laws of Texas in the entire area of both the east and west jetties.

Louisiana took Mr. Morris' deposition on April 10, 1974. Mr. Morris stated that he was only in the Enforcement Division from 1943 to 1958, and that since 1958 he has been Area Manager of Murphree's Wildlife Management Area and has nothing to do with enforcing game laws.[9]

Mr. Morris stated that the laws of Texas prohibited trawling or seining in any of the passes leading from the Gulf of Mexico into inland bodies of water, and that Texas enforced fish laws in the whole of the portions of the Sabine Pass as it extended throughout the jetties.[10]

Mr. Cross' statement and affidavit does not agree with the testimony of Mr. Morris taken under cross examination by Louisiana. Mr. Morris did admit in his deposition, however, that he was aware that Louisiana had arrested persons fishing on the east jetties.[11]

Louisiana introduced into evidence as Louisiana Exhibit UUU 1-5, oil, gas and mineral leases granted

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[8] Texas Exhibit III-1.

[9] Texas Exhibit III-1, pp. 4 and 5.

[10] Texas Exhibit III-1, pp. 17-18.

[11] Texas Exhibit III-1, pp. 50-51.

by Louisiana in the Gulf of Mexico. These leases are shown on a plat prepared by Hatley N. Harrison, Jr., and introduced in evidence as Louisiana Exhibit UUU. This exhibit establishes that Louisiana leased areas in the Gulf *west* of the lateral boundary claims of Texas. Leases granted by Texas in the Gulf were secured from Texas and introduced in evidence by Louisiana as Exhibit CCCC 1-17. Texas furnished a list and plat showing the location of these various leases, which was introduced in evidence as Louisiana Exhibit TTT 1-2.[12] This plat shows that none of the leases granted by Texas were east of the federal lease line. None of the leases were east of a line extending down the geographic middle of Sabine River as extended by the jetties to the gulfward end of the jetties.[13]

Many of the plats introduced by Texas in the initial hearing to establish a midstream boundary between Texas and Louisiana by acquiescence and prescription extend the same line through the geographic middle of Sabine River to its mouth at the gulfward terminus of the jetties.[14]

All of this evidence was considered by the Master resulting in the following findings:

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[12] The east line on this exhibit is the same as the line on the Federal Offshore Lease Map showing the lateral boundary between Louisiana and Texas. See: Louisiana Exhibit O and testimony of Mr. Bascom Giles, p. 321-325.

[13] Louisiana Exhibit TTT.

[14] See Louisiana Exhibit VVV for a list of Texas map exhibits reflecting an extension of the boundary in the geographic middle of Sabine River gulfward through the center of the jetties.

> "On most of the maps introduced in evidence by both States the geographic middle of the jetties is designated as the boundary line between the States of Texas and Louisiana. There is considerable evidence that these two States have recognized the geographic middle of the jetties as their boundary in the enforcement of fish and wildlife laws. There are some exceptions to this but your Special Master concludes without setting forth the affidavits in detail that the conclusion is justified that both States, since the jetties' construction began, have recognized the geographic middle of the channel between the two jetties as being the boundary line between the two States." (Report, p. 14)

The Court, on numerous occasions, has refused to change findings of facts by a Master based on competent evidence.

A rejection by the Court of Texas' plea to disregard the jetties will resolve Texas' exceptions, and justify the Court in overruling them.

Even if the Court disagrees with the findings by the Master that Texas and Louisiana have recognized the boundary down the geographic middle of the jetties sufficient to establish the boundary as to this area by prescription and acquiescence, then there are two other sound reasons given by the Master why the jetties should be considered in establishing the lateral boundary, namely, (1) the mouth of the Sabine in the Gulf was extended by the construction of the jetties to the gulfward terminus of the jetties and (2) the jetties are an extension of the coastline under Article 8

of the Convention on the Territorial Sea and Contiguous Zone (Convention).[15]

B. The Gulfward Terminus of the Jetties is the Mouth of the Sabine in the Gulf of Mexico

The Master determined in his first report, which was affirmed by the Court, that the boundary between Texas and Louisiana was in the geographic middle of the Sabine River from 32° north latitude to the mouth of the Sabine River in the Gulf of Mexico.[16] The mouth of the Sabine River in the Gulf of Mexico is the gulfward terminus of the jetties.

When Texas filed its brief in support of its motion for judgment based on its original complaint, it stated:

> "This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River[1] from the mouth of the River on the Gulf of Mexico to the 32nd degree of north lati-

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[15] Conventions on the Law of the Sea Adopted by United Nations Conference at Geneva, April 27, 1958 (U.N. Doc. A/Conf. 13/L.52). The Convention on the Territorial Sea and the Contiguous Zone entered into force September 10, 1964, when the requisite number of nations had ratified it. The Convention was approved by the Senate May 27, 1960, 106 Cong. Rec. 11196, and ratified by the President March 24, 1961, 44 State Dept. Bull. 609. See Treaties in Force—January 1, 1965, 263. Also United States Exhibit 000.

[16] First Report of Master, pp. 2 and 38.

tude, and for a decree confirming the boundary of the two States in the middle of said stream.

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[1] The use of the term 'Sabine River' in the Complaint, Louisiana's Answer, and this brief includes Sabine Pass and Sabine Lake. By their pleadings, the parties are in agreement that these streams form a continuous body of navigable water, and that for convenience they are referred to collectively as' Sabine River.' "

The Court, in sustaining the first report of the Master, found:

> "Texas brought this original action against Louisiana to establish its rights to the jurisdiction and ownership of the western half of Sabine Pass, Sabine Lake and Sabine River (Sabine) from the *mouth of the Sabine in the Gulf of Mexico to* the thirty-second degree of north latitude and to obtain a decree confirming the boundary of the two States as the geographic middle of Sabine." (Emphasis ours) [17]

Hatley N. Harrison, Jr., an expert Civil Engineer[18] familiar with boundary problems, testified: "It is my opinion that the mouth of the Sabine River was moved some three and a half or four miles seaward and that the mouth of the river is now at the seaward end of the jetties." (Tr. p. 153).

This opinion is confirmed by a statement contained in Texas Exhibit FFF (House of Representatives Executive Document No. 147, 47th Congress, First Session, 1882), where at page 12 we find this

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[17] 410 U.S. 702, 703.

[18] Tr. p. 58.

statement, "Now if jetties are built from the shore 1,800 feet apart, as proposed across the bar to deep water, the pass is virtually prolonged 3-1/2 miles and its mouth transferred to the same distance seaward." [19]

This opinion was given by Captain Heuer in his report to Congress on the design of the jetties long before any question of the gulfward lateral boundary between Texas and Louisiana arose.

Dr. Robert D. Hodgson, a political geographer, and the geographer to the Department of State, and Director at the Office of the Geographer in the Bureau of Intelligence and Research,[20] testifying as a witness for the United States, identified on U. S. Exhibit AAAA the gulfward terminus of the jetties as the mouth of the Sabine River:

"Q. Applying the definitions of river which we have just discussed, would you point out to the Court the mouth of the Sabine River on United States Exhibit AAAA?"

* * *

"A. I would say the mouth of the Sabine is at the closing line which is drawn between the seaward tip of the east jetty and the west jetty as indicated by a black line on the chart.

Q. Can you explain why you have chosen that line, Dr. Hodgson?

A. By the definitional aspect of the river, that it is a natural flow of water contained between

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[19] Tr. p. 155.

[20] Tr. pp. 513-514.

> parallel or nearly parallel banks and if it is not in this sense part of the river, then it must be part of the feature into which it flows, that is, the Gulf. And I would determine on the basis of the very nature of the feature that it is more river, more like a river than it is a gulf, and there I conclude it is a river." (Tr. 524, 529, 530)

Dr. Hodgson explained it was not unusual for a river to be extended by artificial banks, and that river banks occassionally extend into larger bodies into which the river is flowing. (Tr. p. 530)

United States Exhibit NNN is part of a series of 155 charts which were made of the United States territorial sea and contiguous zone. This series of charts was prepared under Dr. Hodgson's general direction through the Interdepartmental Committee on the United States Base Line, which is a part of the subcommittee of the Interagency Law of the Sea Task Force of the United States government. (Tr. p. 531) Dr. Hodgson also testified that these charts were prepared prior to the entry of the United States in this litigation. (Tr. p. 532) This series of charts "contain river mouths which extend seaward into the particular body of water which the river is flowing." (Tr. p. 532) *The mouth of the Sabine River, as illustrated on Chart 1279, is shown at the gulfward terminus of the Sabine River jetties, which represents the official position of the United States with respect to the seaward limit of its inland waters.* (Tr. p. 539) *Dr. Hodgson stated that the territorial sea of the United States is*

measured from the gulfward terminus of the east and west jetty of the Sabine River. (Tr. pp. 741-742).

U. S. Exhibit ZZZ contains many definitions of "river" which further substantiate the fact that the mouth of the Sabine River is at the gulfward terminus of the jetties.[21]

Texas has even used the jetties in plotting and establishing its internal boundaries. When Texas apportioned the marginal sea among the counties along the Gulf of Mexico under authority of Texas Senate Bill No. 338, Chapter 287, 50th Regular Session, effective in 1947,[22] the east boundary of Jefferson County started at the approximate center of a closing line at the gulfward terminus of the jetties. This was confirmed by the testimony of Dr. Hodgson (Tr. pp. 602-603) and Hatley N. Harrison, Jr. (Tr. p. 194).

United States Exhibit AAAAA, is a copy of Coast Chart No. 203, Plate No. 2353, dated May, 1899, of the coast of Texas from Sabine Pass westward to High Island, indicating that the first publication was 1892. This chart shows the jetties into the Gulf of Mexico with a notation at the end of the jetties in the Gulf "Sabine Pass". Further north on the chart where the Pass widens into a lake is a notation "Lake Sabine". This chart evidences the fact that the United States Coast and Geodetic Survey considered that Sabine Pass extended to the gulfward terminus of the jetties at least as early as 1899.

United States Exhibit BBBBB is Chart No. 203,

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[21] Tr. pp. 518, 522-524, 529-530.

[22] Louisiana Exhibits NNN and AAAA.

Edition 7, Plate No. 2353, dated June, 1901. This chart shows the jetties extending into the Gulf with the phrase along the west jetty "Sabine Pass". This chart has a notation—"Lake Sabine"—after Sabine Pass widens into Sabine Lake. It is clear that the United States Coast and Geodetic Survey considered that Sabine Pass extended to the gulfward terminus of the jetties in 1901.

Texas Exhibit RRR was taken from Chart No. 203, Plate No. 2353, dated October, 1900, and referred to as the coast of Texas from Sabine Pass westward to High Island. This chart showed the jetties into the Gulf, with the phrase near the end of the jetties, "Sabine Pass". After Sabine Pass widens into the lake, there is a phrase "Lake Sabine". The Coast and Geodetic Survey, in preparing this chart, considered that Sabine Pass was extended to the gulfward terminus of the jetties in 1900. (Louisiana's Reply Brief, pp. 11-12).

Based on this evidence the Master found:

> "There is evidence and testimony from which it could be found that the jetties extend the river and that the mouth of the river is now actually at the gulfward terminus of the jetties (See testimony of Dr. Robert D. Hodgson, transcript at 524, 529-531.[7] See also U.S. Exhibit NNN, Texas Exhibit FFF). The geographic middle of the river is therefore the middle of the jetties.

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[7] Dr. Robert D. Hodgson is the geographer to the Department of State, Director at the Office of the Geographer in the Bureau of Intelligence and Research, and author of numerous articles on political geography. See transcript pp. 513-518." (Master's Report, p. 15).

C. The Jetties are an Extension of the Coastline under Article 8 of the Convention on the Territorial Sea and the Contiguous Zone

In establishing the coastline to measure the extent of the marginal sea acquired by Louisiana under the Submerged Lands Act, the Court adopted the criteria formulated in the Convention. Under the Convention the coastline extended to the seaward extension of the jetties. (U.S. Exhibit 000)

The Court has drawn upon international laws as the source of applicable law in both interstate and federal-state boundary disputes. In at least three *interstate* boundary disputes the Supreme Court has followed the precept that, to use the Court's words, "principles of international law . . . apply also to boundaries between States constituting this country." [*Wisconsin v. Michigan*, 295 U.S. 455, 461. Also *New Jersey v. Delaware*, 291 U.S. 361, 378; *Louisiana v. Mississippi*, 202 U.S. 1, 49][23]

Article 8 of the Convention reads as follows:

"Article 8

> "For the purpose of delimiting the territorial seas, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast."

Under Texas' contentions most of both jetties and the area between them would fall in Texas.[24] *If Texas'*

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[23] U. S. Exhibit KKKK, p. 149.

[24] Texas Exhibit DDD. Although the basic map for this

contention is sustained, Louisiana would be deprived of the seabed in the east half of the area between the jetties already awarded Louisiana by the Court. Portions of the marginal sea already awarded Louisiana by the Court would be placed in question for the award considered the east jetty as part of Louisiana's coastline from which to measure the three geographical miles granted to Louisiana under the Submerged Lands Act.[25] The witnesses for Texas used Article 12 of the Convention in arguing for a median line, but refused to recognize Article 8 of the same Convention and its application to the jetties as an extension of the coastline. Texas also failed to use Article 13 of the Convention, the application of which is so clearly stated by the Master.[26]

The Court, in its Supplemental Decree No. 3 rendered in the case of *United States v. State of Louisiana*, on December 20, 1971,[27] recognized that Louisiana's rights under the Submerged Lands Act included a three mile arc projected gulfward from the terminus of the east jetty. This is shown by copy of a plat attached hereto for illustrious purposes as Appendix "A".

If this were not so, then the waters between the

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exhibit was taken from U. S. XXX, it tends to show the jetties extending westerly under Texas, when as a matter of fact the jetties extend easterly under Louisiana as shown by U. S. Exhibit XXX and Master's exhibit attached to his report.

[25] Testimony of Dr. Hodgson, Tr. pp. 732-733.

[26] Report, pp. 45-48.

[27] 92 S.Ct. 544, 404 U.S. 388, 30 L.Ed.2d 525 (1971).

jetties would be treated as part of the territorial sea and not inland waters. This distinction is important in protecting the jetties and the waters between the jetties against foreign intrusions.[28]

In discussing this distinction, Dr. Louis J. Bouchez in his book,[29] had this to say:

> "If a certain water area is considered as part of the internal waters of a coastal State those waters will fall under the complete sovereignty of that State. The coastal State may thus prohibit access of foreign ships to such water areas, unless provisions are made by the coastal State granting the normal right of free access to ships of non-coastal States. The right of innocent passage is expressly recognized in Article 5 of the Geneva Convention on the Territorial Sea:
>
> > 'Where the establishment of a straight baseline in accordance with Article 4 has the effect of enclosing as internal waters, areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided for in Article 14 to 23, shall exist in those waters.' " (Page 5)[30]

It would indeed be a strange anomaly to say that the coast line of both Texas and Louisiana extends to

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[28] Dr. Hodgson testimony, Tr. pp. 718-723.

[29] Leo J. Bouchez, *The Regime of Bays in International Law* (Leyden: Netherlands, A. W. Sythoff, 1964).

[30] Dr. Bouchez uses the phrase "internal waters" instead of "inland waters", but both phrases refer to the same waters which fall under the complete sovereignty of a coastal state.

the gulfward terminus of the jetties and not use this same point as the mouth of the Sabine River in the Gulf of Mexico in establishing the lateral boundary between the two states.

Dr. Lewis M. Alexander, a geographer retained by Texas, stated that he would not use the jetties at the Sabine River in establishing the lateral boundary between Texas and Louisiana. This opinion was based on his disagreement with the Court's opinion in the *California*[31] and *Louisiana*[32] cases, holding the coastline, for the purpose of measuring the seaward limits acquired by the states under the Submerged Lands Act, is the same coastline the United States uses in its foreign relations, including man-made harborworks.[33]

Dr. Alexander testified: "I don't agree with them [Supreme Court]. I would like to see the case reopened." (Texas Exhibit LLL-1, page 24). Dr. Alexander did admit that the *jetties should be used in establishing a lateral boundary between the United States and a foreign nation.* He testified: "I feel indeed that they should be used (jetties) as against foreign nations in delimiting our territorial waters, but they need not be taken into consideration in inter-

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[31] *United States v. State of California*, 85 S.Ct. 1401, 381 U.S. 139, 14 L.Ed.2d 296 (1965), reh. den. 86 S.Ct. 607, 382 U.S. 448, 15 L.Ed.2d 517.

[32] *United States v. State of Louisiana, et al*, 88 S.Ct. 367, 389 U.S. 155, 19 L.Ed.2d 383 (1967) reh. den. 88 S.Ct. 757, 389 U.S. 1059, 19 L.Ed.2d 861 (1968).

[33] The Court, in the *California* case [85 S.Ct. 1401, 1415-1416] adopted the definitions of the Convention for the purposes of interpreting the Submerged Lands Act.

nal boundaries between states which do not involve our position with foreign countries. These, I think, are two different things." [34]

Mr. Richard Young, who qualified as an authority on international law for Texas, testified he would not use the jetties in fixing the lateral boundary between Texas and Louisiana, and that he did not consider the gulfward terminus of the jetties as the mouth of the Sabine River. One reason given by Mr. Young was that there was water on both sides of the jetties as they extended into the Gulf.[35] Mr. Young admitted that this same condition existed at the passes of the Mississippi River where they enter the Gulf of Mexico.[36] Mr. Young also admitted he would recommend the use of jetties similar to those at the Sabine River if they existed at the Rio Grande in establishing the lateral boundary between the United States and Mexico.[37] He apparently shared Dr. Alexander's disapproval of the Court's ruling in the *California* and *Louisiana* cases.

The boundary between Mexico and the United States has been stabilized by the use of a fixed point from shore about 2,000 feet shoreward.[38] The point on

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[34] Texas Exhibit LLL-1, p. 21; also, p. 61. Dr. Hodgson stated that he saw no reason why lateral boundaries between states of the Union and between the United States and a foreign nation should not be determined by the same method. He also stated that he had never read any works that suggested that different methods should be used. Tr. pp. 745-746.

[35] Tr. p. 966.

[36] Tr. p. 1070.

[37] Tr. p. 1060-1063.

[38] United States Exhibits SSS, TTT and VVV, Tr. p. 562-569.

the shore was not the same point as Texas' historical boundary at the Rio Grande in 1845. Texas' modern shore was used in fixing the boundary. The use of the jetties at the Sabine will stabilize the lateral offshore boundary between Texas and Louisiana.

In summing up his findings that the baseline should include the jetties the Master stated:

> "It is the belief of your Special Master that the case law generated by the Submerged Lands Act requires that the baseline used to construct the lateral boundary in this case include the jetties pursuant to Articles 8 and 12. Moreover there is expert testimony which would support a finding that the mouth of the river is at the terminus of the jetties. The expert testimony was offered by Dr. Hodgson (p. 529 of Transcript). Prescription and acquiescence evidence also indicates that the geographic middle of the jetty channel marks the lateral boundary. Furthermore, a lateral boundary line drawn using the modern coast with a baseline including a closing line across the river at the head of the jetties would produce an inequitable division of the seabed granted to the states. Such a line would be the most easterly of any proposed. Such a line is far to the east of even the Texas statutory line, and is also east of the line argued for by Texas as its primary contention.
>
> The Special Master concludes that the baseline should include the jetties of Texas and Louisiana. Any construction of Article 13 which requires the baseline to include a closing line at the head of the jetties, rather than at the terminus, is rejected. The Convention (Articles 3, 8 and

12), the case law, and equity require this conclusion." (Report of Special Master, pp. 47-48).

II.
TEXAS' EXCEPTIONS TO THE MASTER'S REPORT

Texas has filed two formal exceptions to the Master's report, both of which concern the maritime boundary between Texas and Louisiana and Texas and the United States in the Gulf of Mexico. The first exception is leveled at the failure of the Master to find that there was a historic lateral boundary in the Gulf of Mexico between Texas and Louisiana. The second exception is leveled at the finding of the Master that the jetties must be considered in fixing the lateral maritime boundary between Texas and Louisiana and Texas and the United States in the Gulf of Mexico.

A. The Master was Correct in Holding That There was no Historical Maritime Boundary Between Texas and Louisiana and Texas and the United States in the Gulf of Mexico

The finding of the Master on this issue, which is the subject of Texas' exception, reads:

> "Your Special Master concludes, and recommends, that the Court find that a lateral maritime boundary in the Gulf was not established in 1836 or in the period from 1845 to 1848 or thereafter." (Report, p. 37).[39]

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[39] See pages 35-45 of the report for the Master's sound reasoning for rejecting the claim by Texas of a historic lateral boundary in the Gulf.

The Master's findings are correct. In 1947 the Court, in the first *California* case,[40] held that the States of the Union owned no marginal sea. Their boundaries stopped at the low water mark or where their inland waters met the open sea. In 1950 the Court applied this principle to both Louisiana and Texas.[41] To grant rights in the marginal sea to the various states bordering on the Pacific, Gulf of Mexico, Atlantic and Great Lakes, the United States Congress, in 1953, passed the Submerged Lands Act,[42] which established two separate types of grants of submerged lands to the several states.

The first was an unconditional grant allowing each State to claim a seaward boundary out to a line three geographical miles distant from its coast line. The second was a grant conditioned on prior history. The conditional grant allowed States bordering on the Gulf of Mexico to claim the historical boundary they possessed when they were admitted into the Union, but not greater than three leagues. The Court determined, Louisiana had no historic boundary and limited Louisiana's claim to three geographic miles from its coast line.[43] The Court, at the same time, recognized

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[40] *United States v. State of California*, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 (1947).

[41] *United States v. State of Texas*, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221 (1950) and *United States v. State of Louisiana*, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216 (1950).

[42] 67 Stat. 29 (1953); 43 U.S.C. 1301, et seq.

[43] *United States v. State of Louisiana, et al*, 80 S.Ct. 961, 363 U.S. 1, 121, 4 L.Ed.2d 1025, 1096, reh. den. 81 S.Ct. 36, 364 U.S. 856, 5 L.Ed.2d 80, supplemented 86 S.Ct. 419, 382 U.S. 288, 15 L.Ed.2d 331 (1960).

Texas had a historic boundary of three leagues when it was admitted into the Union in 1845.[44]

When Texas was admitted into the Union in 1845,[45] its boundary was on the west bank of the Sabine River as originally established by the Treaty of 1819[46] and confirmed by later treaties and finally approved and staked in 1840.

The Court, in rejecting Texas' claim that it should be treated differently from California in view of the fact that it was an independent nation on its admission into the Union in 1845, had this to say:

> "The 'equal footing' clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the dominium and imperium in and over this belt which the United States now claims. When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an 'equal footing' with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. The United States then

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[44] Id., 363 U.S. 1, 36.

[45] Act of Congress admitting the State of Texas into the Union on December 29, 1845. 9 Stat. 108.

[46] The Treaty of Amity, Settlement and Limits between the United States and Spain in 1819. 8 Stat. 252.

took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as *an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.*" [47] (Emphasis ours)

The Court, in its very recent decision in the case of *United States v. State of Maine, et al*, 95 S.Ct. 1155 (1975), reaffirmed the paramount rights of the Federal Government in the marginal sea. In commenting on the *Texas* case mentioned above, the Court stated:

"United States v. Texas unmistakably declares this constitutional proposition. There, Texas claimed that prior to joining the Union, she was an independent sovereign with boundaries extending a substantial distance in the Gulf of Mexico—boundaries which Congress had allegedly recognized when Texas was admitted to the Union. In deciding against the State, the Court did not reject the prestatehood rights of Texas as it had the rights of the 13 original States in the *California* case. On the contrary, the Court was quite willing to 'assume that as a republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of the riches which it held. In other words, we assume that it had *dominium* and *imperium* in and

[47] *United States v. State of Texas*, 70 S.Ct. 918, 923, 339 U.S. 707, 717, 718, 94 L.Ed. 1221, reh. den. 71 S.Ct. 277, 340 U.S. 907, 95 L.Ed. 656 (1950).

> over this belt which the United States now claims.' 339 U.S., at 717, 70 S.Ct. at 923. Such prior ownership nevertheless did not survive becoming a member of the Union* * *"

In view of the public and private business which has been transacted in the nearly 30 years since the *California* case, and the substantial litigation and legislation which has evolved from that holding, the Court stated:

> "... We are quite sure that it would be inappropriate to disturb our prior cases, major legislation, and many years of commercial activity[9] by calling into question, at this date, the constitutional premise of prior decisions....

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[9] We have long held that the doctrine of *stare decisis* carries particular force where the effect of re-examination of a prior rule would be to overturn long-accepted commercial practice. See, e.g., M'Gruder v. Bank of Washington, 9 Wheat. (22 U.S.) 170, 6 L.Ed. 598, 602 (1824); Rock Spring Distilling Co. v. W.A. Gines & Co., 246 U.S. 312, 320, 38 S.Ct. 327, 329, 62 L.Ed. 738 (1918)."

According to the opinions of this Court, therefore, Texas had no additional rights in the marginal sea than the other states and, consequently, Texas had no lateral boundary in the marginal sea between it and Louisiana. Texas only acquired rights in the marginal sea on the passage of the Submerged Lands Act of 1953.

After the Supreme Court determined that Texas was entitled to a historical boundary in the Gulf of Mexico to establish rights under the Submerged Lands Act, Texas attempted to have this historic boundary

extend from the Sabine jetties in the Gulf of Mexico. In discussing the several grants under the Submerged Lands Act, Justice Black, in the case of *United States v. State of Louisiana, et al,* said:

> "... Congress in 1953 passed the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315, which makes two entirely separate types of grants of submerged land to the States. The first is an unconditional grant allowing each coastal State to claim a seaward boundary out to a line three geographic miles distant from its 'coast line.' The second is a grant conditioned upon a State's prior history. It allows those States bordering on the Gulf of Mexico, which at the time of their entry into the Union had a seaward boundary beyond three miles, to claim this historical boundary 'as it existed at the time such State became a member of the Union,' but with the maximum limitation that no State may claim more than 'three marine leagues' (approximately nine miles). In United States v. States of Louisiana, Texas, Mississippi, Alabama, and Florida, 363 U.S. 1, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960), we held that Texas qualified for this conditional three-league grant." [88 S.Ct. 367, 368, 389 U.S. 155, 156]

The Court, in the same case, in recognizing that artificial jetties are part of the coast line, stated:

> "Article 8 of this Convention makes the following provision for artificially constructed extensions into the sea: 'For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of

the harbour system shall be regarded as forming part of the coast.' (1964) 15 U. S. T. (Pt. 2) 1607, 1609. Thus, it is clear that in the case of the three-mile unconditional grant artificial jetties are a part of the coastline for measurement purposes, and if Texas were claiming under the standard three-mile grant, its argument regarding the jetties would be far more persuasive.

"Texas has not claimed the standard three-mile grant, however, but has asserted ownership over three marine leagues or approximately nine miles of submerged land, and this Court has sustained that claim." [88 S.Ct. 367, 369, 389 U.S. 155, 158]

The Court, in rejecting Texas' claim, went on to say:

"Thus, the State of Texas, which has been allowed by the United States to claim a larger portion of submerged lands because of its historical situation, is limited in its claim by fixed historical boundaries. It may not combine the best features of both grants in order to carve out the largest possible area for itself. If it wishes to take advantage of the present three-mile grant then it may use its present coastline as defined by Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, supra, to include artificial jetties. *But if Texas wishes to take under the more expansive historical grant, it must use boundaries as they existed in 1845 when Texas was admitted to the Union.* At that time there were no artificial jetties in existence so obviously they are not considered." [88 S.Ct. 367, 370, 389 U.S. 155, 160] (Emphasis ours).

The Court finally held:

> "Thus, we hold today that the congressional grant to Texas of three marine leagues of submerged land is measured by the historical state boundaries 'as they existed' in 1845 when Texas was admitted into the Union. The United States is entitled to a supplemental decree to this effect, and we grant 60 days to each of the parties in which to submit proposed supplemental decrees for our consideration." [48]

In 1845 Texas' boundary was on the west bank of the Sabine River and, therefore, did not include any of the river or river mouth. Texas' historical lateral boundary claim is based on owning one-half of Sabine River in 1845, which it did not own.

To overcome these facts, Texas argues that soon after it declared its independence from Mexico on March 2, 1836, the new Republic of Texas defined its boundary, described in part, as: "beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth

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[48] Texas had the option to take under either the unconditional grant or the grant conditioned on prior history. It could not take the best of both. The west jetty fell in Texas under either grant as harbor works under Article 8 of the Convention on the Territorial Sea and the Contiguous Zone. Texas attempted to claim the conditional grant since it gained more territory than claiming under the unconditional grant and thereby attempted to use the jetties as a coastline from which to measure three leagues. If Texas acquired less territory under the conditional grant, it still could use the unconditional grant.

of the Rio Grande. . ." [49] Texas further argued that when it was admitted into the Union the annexation resolution in 1845 stated that there would be included in the new state all the territory rightfully belonging to the Republic of Texas.[50] Texas failed to mention that the United States recognized the Republic of Texas in March of 1837, and that on April 25, 1838 the United States entered into a convention with the Republic of Texas to establish the boundary between the two countries in accordance with the treaty between the United States and Spain of 1819, which was later ratified in the treaty between the United States and the Republic of Mexico in 1828.

The treaties recognized that the boundary "shall begin on the Gulf of Mexico, at the mouth of the River Sabine, in the sea, continuing north, along the west bank of that river." It is important to recognize the treaty called for the boundary to "begin on the Gulf of Mexico", not in the mouth of the Sabine River. This was the boundary of the Republic of Texas when it entered the Union as a state in 1845. This 1838 treaty took precedence over the 1836 act of the Republic of Texas when the Republic of Texas was accepted in the Union as a state in 1845.

Therefore, in 1845 Texas' boundary was on the west bank of the Sabine River as it entered the Gulf. Even if we assume Texas had at that time a historic three league maritime boundary in the Gulf, it was

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[49] 1 Laws, Republic of Texas 3-7, Vernon Annot. State Constitution.

[50] 5 Stat. 797.

limited by the Treaty of 1838 between the United States and the Republic of Texas, which would have placed its starting point on the west bank of the Sabine. The Act of 1848 permitting Texas to extend its boundary to the middle of Sabine Pass, Sabine Lake and Sabine River, carried with it no marginal sea.

This is shown by the act of the United States Congress on July 5, 1848 permitting Texas to extend its eastern boundary to one-half of Sabine Pass, Sabine Lake and Sabine River which contained the following language:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude." [51]

Texas therefore had no historic marginal lateral boundary in the Gulf when it entered the Union in 1845. Any area in the Gulf east of the west bank granted Texas under the Submerged Lands Act extended only three marine miles from its present coast line.[52]

This historic legal position was admitted by S. D.

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[51] 9 Stat. 245.

[52] In 1845 and today the United States has recognized only a three mile territorial sea from its coastline. Dr. Hodgson, Tr. pp. 607-608.

McDaniel in arguing Texas' claim before the Court in this case, when he said, in answer to a question by the Court as to whether or not the fixing of the boundary would affect the offshore boundary:

> "That is correct. This does not affect the United States, I do not think, because as to the United States, the three-league limit only comes as far as our historic boundary, and Congress has not consented for us to extend it here any more than they have consented for us to extend up here north of the 32nd degree of latitude. So, we have no controversy with that." [53]

The Court has decided Texas' seaward boundary is to be measured from its present or future coastline. It follows this same rule applies as found by the Master in establishing the lateral boundary among Texas, Louisiana and the United States.

Texas discussed a stipulation between Texas and the United States, referred to by the Court in the case of *United States v. Louisiana, et al, (The Texas Boundary Case)*.[54] In the Court's opinion it referred to a decree which was entered and reported in 89 S.Ct. 1614. This decree, after giving the coordinates of the boundary between the United States and Texas in the Gulf of Mexico, stated:

> "As against the United States, with the exceptions provided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313, the State of Texas is entitled to—

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[53] Transcript of argument before the United States Supreme Court on December 11, 1972.

[54] 89 S.Ct. 768, 394 U.S. 1 (1969).

(a) All the lands, minerals and other natural resources underlying the Gulf of Mexico, bounded on the south by the international boundary with Mexico *and on the east by the western boundary of Louisiana and an extension thereof, that are within three geographical miles from the present or future coastline as referred to* in § 2(c) of the Submerged Lands Act, 43 U.S.C. § 1301(c); and

(b) All the lands, minerals and other natural resources underlying the Gulf of Mexico, bounded on the south by the international boundary with Mexico and on *the east by the western boundary of Louisiana and an extension thereof, less than three marine leagues gulfward from the present or future coastline as referred to* in § 2 (c) of the Submerged Lands Act,43, U.S.C. § 1301(c) that are landward of the line described in paragraph 1(b) hereof." [89 S.Ct. 1614, 1621] (Emphasis ours)

Therefore, Texas has the option, as we have previously stated, to measure from its present or future coastline three geographical miles. The three mile boundary may extend beyond the line fixed by the coordinates in the decree, but the three league boundary cannot extend beyond the coordinates fixed in the decree, based on Texas' 1845 coastline. Therefore, the Court has already decided that Texas may use the *west jetty* in establishing a three marine mile territorial sea.

It is obvious from these two paragraphs of the Court's ruling that, in determining the lateral boundary among Texas, Louisiana, and the United States, that the present coastline is to be used in fixing the

lateral boundary. This includes the jetties as an extension thereof at Sabine Pass under Article 8 of the Convention. The use of any other coastline would do violence to the decree of the Court fixing Texas' gulfward boundary between the United States and Texas.

Texas had a boundary between it and Mexico commencing at the mouth of the Rio Grande when it entered the Union in 1845. The boundary between the Republic of Texas and Mexico was fixed by the Treaty of 1836, commencing at the mouth of the Rio Grande. To locate and fix this boundary Dr. Hodgson testified that the United States and Mexico on November 23, 1970 fixed the lateral boundary between United States and Mexico at the mouth of the Rio Grande, which became the boundary between Mexico and Texas. This moved the historic boundary of 1845 north[55] since the mouth of the river had moved north. Even though the establishment of the boundary between United States and Mexico, which became the boundary of Texas, changed the historical boundary that Texas had in 1845, nevertheless the new boundary became binding on Texas.[56] There is nothing different between the facts in the Mexico-United States boundary settlement and in recognizing the Sabine River jetties, which were constructed in 1883 by the U.S. Corps of Engineers at the request of and for the benefit of the citizens of Texas and Louisiana.

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[55] See Tr. p. 562, et seq. and Texas Exhibit TTT.

[56] Tr. p. 733-734.

The only obvious fact resulting from this discussion is that the Court, in the decree fixing the gulfward boundary between Texas and the United States, has stated that the lateral boundary between Texas and Louisiana is to be measured from Texas' modern coastline. The Court has also made it clear that Texas is bound by the lateral boundary between the United States and Mexico in determining and fixing Texas' southern lateral boundary. As noted above, this lateral boundary was established from Texas' *modern coastline.*

Even in considering the median line proposed by Texas, based on its historic coastline, the Master concluded "that the median line on Texas Exhibit DDD does have several technical defects which make the line inaccurate." [57] The Master then went on to state that he is not basing his conclusion on the inaccuracy of the line, but on the fact that he found that Texas did *not* have a lateral boundary in the Gulf in 1845 and further, the line proposed by Texas would produce an inequitable result.[58]

Texas' statutory line was based on the "thalweg" doctrine previously rejected by the Court in this case. The Master also referred to the testimony of Mr. Bascomb Giles, former Texas Land Commissioner, when the statutory line was created by the Texas Legislature, and stated:

"Since the 'thalweg' doctrine was rejected by

[57] Report, pp. 39-40.
[58] Report, p. 40.

your Special Master in his first report, and affirmed by this Court in that respect, it is clear that no extension of such a 'thalweg' line is acceptable in this dispute." [59]

B. There is no Basis for Texas' Argument that the Jetties Should be Disregarded

Texas argues that, whether the lateral boundary used existed in contemplation of law since Texas' admission to the Union (an inchoate boundary) or whether some other view of that lateral extension is accepted, it is clear that the departure point for the lateral boundary has always been the "mouth" of the Sabine River.

In rejecting this contention of Texas, the Master said:

> "The Special Master concludes that the position of the United States is a sound one, namely, that the jetties should be used in determining the boundary since both jetties are part of the coast under Article 8 and their use is not inequitable." (Report, p. 45).

To demonstrate the correctness of this determination, the Master discussed Article 13 of the Convention, which provides:

> "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks." (Report, p. 45).

After discussing the application of Article 13 of

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[59] Report, p. 40.

the Convention to this case, the Master then concluded:

> "The Special Master concludes that the baseline should include the jetties of Texas and Louisiana. Any construction of Article 13 which requires the baseline to include a closing line at the head of the jetties, rather than at the terminus, is rejected. The Convention (Articles 3, 8 and 12), the case law, and equity require this conclusion." (Report, p. 48).

It is strange that Texas and its witnesses rely on Article 12 of the Convention to justify a median line, but fail to recognize the application of Article 8 of the Convention, which recognizes the jetties as part of the present coastline.

Texas argues that the proper application of Article 12 of the Convention compels a conclusion that the jetties should not be used in fixing the lateral boundary. The two experts for Texas, namely Dr. Lewis M. Alexander and Mr. Richard Young, do not agree with this conclusion by Texas, for they both recognized that if the jetties existed on a boundary river between the United States and foreign nation it should be used in establishing a lateral boundary. They disagree with the Court's application of the Convention to rights acquired by the States under the Submerged Lands Act, and this accounts for their rejection of the jetties.

While criticizing the Court's use of the Convention in establishing the rights of the States under the Submerged Lands Act, these two experts, at the same time, urged Article 12 of the Convention as a basis

for establishing a median line for the lateral boundary between Texas and Louisiana and Texas and the United States. This inconsistency, no doubt, accounted in part for the Master's rejection of their expert opinion.

For the foregoing reasons and those advanced in Part IA, B, and C of this memorandum, Louisiana urges that the Master's finding that the jetties should be considered in determining the maritime lateral boundary between Louisiana and Texas and between Texas and the United States is correct and that Texas' exceptions should be overruled.

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE FOLDOUT NO 2

CONCLUSION

We respectfully urge that the two exceptions filed by Texas be overruled and that the exception of the State of Louisiana be maintained and the Master's Report be accepted in all other particulars, except as the boundary enters Sabine Lake from Sabine River it should be in the west channel as set forth on Louisiana's Exhibit DDD.

Respectfully submitted,

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CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26 day of June, 1975, I served copies of the foregoing Reply Memorandum for the State of Louisiana, by transmitting conformed copies of the same by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General and Attorney General of the United States, and the City of Port Arthur, Texas, through its City Attorney.

WILLIAM J, GUSTE, JR.
Attorney General
State of Louisiana

By: _____
OLIVER P. STOCKWELL,
Special Assistant Attorney General

Supreme Court, U. S.
FILED
JUN 27 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

* * *

NO. 36, ORIGINAL

* * *

THE STATE OF TEXAS,

Plaintiff

V.

THE STATE OF LOUISIANA,

Defendant

* * *

BRIEF OF THE STATE OF TEXAS IN REPLY TO THE EXCEPTION FILED BY THE STATE OF LOUISIANA

* * *

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ATTORNEYS FOR PLAINTIFF

June 1975

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NO. 36, ORIGINAL

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THE STATE OF TEXAS,
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BRIEF OF THE STATE OF TEXAS IN REPLY TO THE EXCEPTION FILED BY THE STATE OF LOUISIANA

* * *

The Report of the Special Master, Judge Robert Van Pelt, was filed in this Original action on April 14, 1975. The parties were given 45 days within which to file their exceptions, if any, to the Report and an additional 30 days to file their reply to any exceptions of other parties. The State of Texas accepted and urged approval of the Report, subject to two exceptions as set out in its brief filed with this Court May 29, 1975. No exceptions to the Re-

port of the Special Master were filed by the United States.

Louisiana filed the following exception to the Report of the Special Master and brief in support thereof:

> "Louisiana excepts only to that portion of the Special Master's Report which marks the boundary line between Texas and Louisiana through the geographic middle of the Middle Pass as Sabine River enters Sabine Lake, instead of in the geographic middle of the West Pass, thereby placing land admittedly in the State of Louisiana and on which taxes are presently being paid to Louisiana, in the State of Texas."

This brief of the State of Texas is submitted in reply to the exception filed by the State of Louisiana.

> THE SPECIAL MASTER CORRECTLY HELD THAT THE BOUNDARY BETWEEN TEXAS AND LOUISIANA WHERE THE SABINE RIVER ENTERS THE NORTHERN END OF SABINE LAKE IS THE GEOGRAPHIC MIDDLE OF THE MIDDLE PASS OF THE SABINE RIVER.

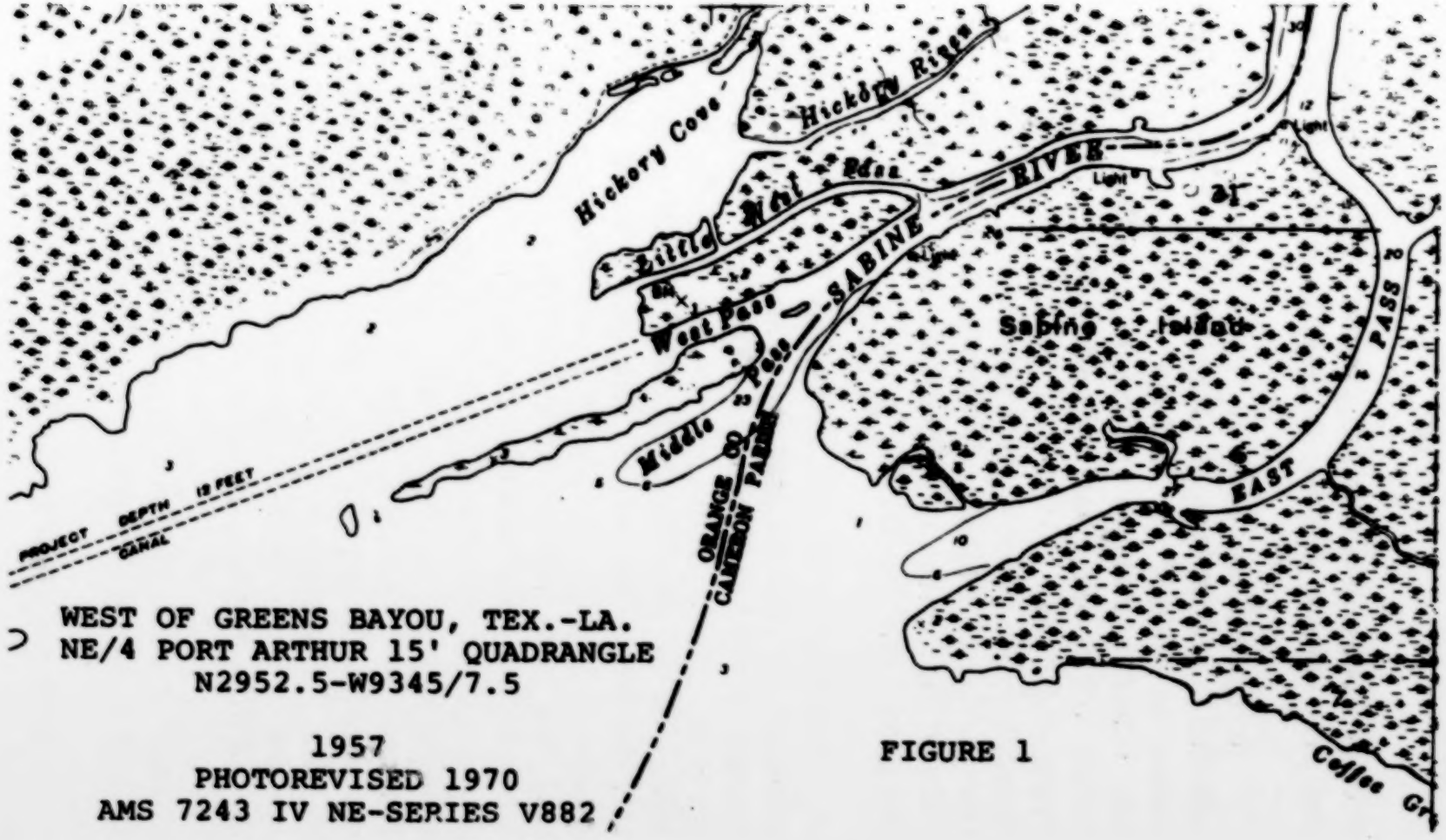
The Supreme Court in Texas v. Louisiana, 410 U.S. 702, 707 (1973), affirmed the holding of the Special Master that the boundary between Texas and Louisiana is the geographic middle of Sabine River but left for further deliberation the issue of the

precise location of that geographic middle, including the area where the River enters the Sabine Lake.

At the entrance of the Lake there are three islands. The principal island is the large island known as "Shell" or "Sabine" Island. There are two other islands to the west of "Sabine" Island which are at least partially artificial in origin. In bypassing these islands the River enters the lake through three passes. It was necessary, therefore, that the Special Master determine the location of the "River" at the head of Sabine Lake in order to locate the geographic middle.

The Special Master correctly made this determination by ascertaining the primary and historical course of the Sabine River as it entered Sabine Lake in 1848. As a basis for the decision the Master looked to the available evidence regarding the relative depths of the passes. See pages 9, 10, Special Master's Report. A review of this evidence showed that "the pass marked East Pass on Louisiana Exhibit EEE-1, and marked the Middle Pass on most of the subsequent exhibits, marks the true geographic middle of the river." Special Master's Report, page 9. See Figure 1, page 4. In making this recommendation the Master clearly was attempting to find the geographic middle of the river and did not use criteria such as navigation or the middle of the main channel as argued by the State of Louisiana. Indeed no evidence has been introduced as to which channel was utilized for navigation purposes by any type of seagoing vessels. As stated by the Master:

"Both maps particularly EEE-1 indicates



WEST OF GREENS BAYOU, TEX.-LA.
NE/4 PORT ARTHUR 15' QUADRANGLE
N2952.5-W9345/7.5

1957
PHOTOREVISED 1970
AMS 7243 IV NE-SERIES V882

FIGURE 1

> that a greater volume of water went down the east fork although the west fork as distinguished from the second west fork did carry a substantial amount of water. It is also apparent from these exhibits that the fork which Louisiana claims should be used in marking the geographic middle of the Sabine did not carry a significant flow of water. It seems to your Special Master that it would be inequitable to locate the geographic middle of the Sabine River in an insignificant channel lying to the west of where the main volume of the Sabine's waters flowed in 1850 and 1851 or now flows as shown by the aerial photographs." Special Master's Report, page 10. (Emphasis added.)

The geographic middle of the "Middle" pass is clearly the geographic middle of the "Sabine River"; the others are not.

Nonetheless, Louisiana argues that the geographic middle of the Sabine River as it enters the Sabine Lake must be determined by using the channel of the Sabine River which was used in locating the boundary by the Joint Commission for surveying the boundary between Texas and the United States in 1840. It is undisputed that when Texas was admitted into the Union in 1845 the eastern boundary of the State was on the west bank of the Sabine River. Since the waters of the Sabine River flow through all three passes, the west bank of the westernmost pass was the boundary of Texas in 1845. Because of the location of the boundary at this time, no deter-

mination was necessary as to the location of the geographic middle of the Sabine River as it entered Sabine Lake. However, since in 1848 the boundary was moved to the geographic middle of the Sabine River, the location of the geographic middle of the River and hence the boundary required resolution. This was the original purpose of this litigation and the Master has now correctly resolved the issue as to the geographic middle of the Sabine River as it enters the northern end of Sabine Lake.

Still, Louisiana argues that her alleged ownership of the island west of the middle pass or ownership by her citizens somehow requires a finding that the west pass is the boundary between the states. Louisiana erroneously bases her position on an opinion issued June 27, 1910, by the Assistant Secretary of the Interior (Plaintiff's Exhibit B, Item 1) holding that Louisiana owned an island lying in the Sabine River to the west of east pass.[1]

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[1] In attempting to resolve ownership of the island, the Assistant Secretary as well as the states labored under the erroneous assumption that Louisiana could not own an island which was not within her territorial boundary. (Evidence of this mistaken assumption is initially found in Plaintiff's Exhibit B, Item 1, at Page 2.) Faced with the act admitting Louisiana to the Union and setting her boundary as a line beginning at the mouth of the River Sabine and drawn along the middle of said River, including all islands, and the 1838 Convention with the Republic of Texas establishing the west bank of the River as the eastern boundary of Texas and giving island ownership to the United States, as against Texas,

In resolving the question, the Assistant Secretary correctly recognized that:

> "The Supreme Court of the United States has the sole jurisdiction to finally determine the question of disputed boundaries between states. (Virginia v. Tennessee, 148 U.S. 503.) No decision that may be made herein would be binding upon the States." Plaintiff's Exhibit B, Item 1, page 7.

This particular boundary dispute between Texas and Louisiana has now been considered by the Supreme Court. Texas v. Louisiana, supra. Contrary to the assumption of the Assistant Secretary, this Court indicated that the United States owned all islands in the western half of the Sabine which existed in 1848, and may continue to own them even though located within the boundary of Texas.[2] The islands at the head of the lake were patented by the United States to Louisiana or to Louisiana inhabitants. See Louisiana Exhibit "EEE". Assuming arguendo that the islands were owned by the United States, it of

Footnote 1 cont.

the Assistant Secretary concluded that since the islands were given to Louisiana when admitted to the Union, a boundary between the United States and Louisiana necessarily would be in the westernmost channel. (Plaintiff's Exhibit B, Item 1, page 5.)

[2]The fact that the United States withdrew her claim to these islands because they had been patented to Louisiana is relevant to ownership only and does not affect any state boundary.

course had the authority to patent them to citizens of Louisiana. Consequently, it may be that Louisiana or its citizens own lands in the Texas half of the river. Ownership of the islands simply does not affect the boundary between Texas and Louisiana. Recognition of this fact was implicit in Louisiana's previous claim of ownership of "Sam" Island, which clearly lies west of Louisiana's boundary. As stated by this Court:

> "In the case before us, it is probably correct that only the eastern boundary of Texas was extended to the middle of the river in 1848 that State became entitled to any islands in the west half which formed after the date of that extension. But unless the 1848 Act conveyed to Texas the islands located in the western half of the river at that time title to those islands remained in the United States, if the United States had not previously conveyed all or part of them to Louisiana. The 1848 Act, however, does not mention islands in the Sabine, and it would therefore appear, if Lattig is to be followed, that the United States has an interest in any proceedings to determine the ownership of islands in the west half of the Sabine and should be a part to, or at least have the opportunity to participate in, such proceedings. Texas claims any such islands existing prior to 1848 by prescription and acquiescense, but, plainly, a State may not acquire property from the United States in

this manner. United States v. California, 332 U.S. 19, 39-40, 67 S. Ct. 1658, 1668, 1669, 91 L. Ed. 1889 (1947)." 410 U.S. at 714.

Thus, this court views ownership by the United States or Louisiana of islands physically within the boundaries of Texas as consistent with its holding of the boundary as the geographic middle of the River. Clearly the subsequent patent of these islands to Louisiana citizens would not change this holding. Louisiana, as well as Texas and the United States, have recognized this principle as shown by the numerous maps constructed by their respective agencies clearly showing the boundary through middle pass. See Special Master's Report, pages 10, 11; Texas Exhibit F, Items 5, 2, 33, 34.

CONCLUSION

For the foregoing reasons the State of Texas respectfully urges that the determination of the Special Master that the boundary between Texas and Louisiana where the Sabine River enters the northern end of Sabine Lake is the geographic middle of the Middle Pass of the Sabine River be adopted and approved as the judgment of this Court.

Respectfully submitted,

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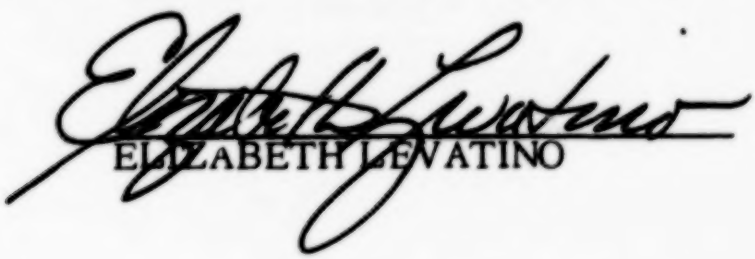
June 1975

CERTIFICATE OF SERVICE

I, Elizabeth Levatino, First Special Assistant Attorney General of the State of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 28th day of June, 1975, I served copies of the foregoing Brief of the State of Texas in Reply to the Exception Filed by the State of Louisiana, by transmitting conformed copies of the same by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Louisiana, and upon the Solicitor General of the United States, and also upon the City of Port Arthur, Texas, through its City Attorney.



ELIZABETH LEVATINO

Supreme Court, U. S.
FILED
SEP 15 1975
MICHAEL RODAK, JR., CLERK

No. 36, Original

In the Supreme Court of the United States

OCTOBER TERM, 1975

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN RESPONSE TO TEXAS' BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

ROBERT H. BORK,
Solicitor General,
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 36, Original

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN RESPONSE TO TEXAS' BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

INTRODUCTION

This case involves the determination of the lateral boundary in the Gulf of Mexico between the States of Texas and Louisiana, and between the State of Texas and the United States.

In previous litigation between the States of Texas and Louisiana, this Court determined that the boundary between them in the Sabine River was the geographic middle of the river, rather than its western bank or the middle of its main channel. *Texas* v. *Louisiana,* 410 U.S. 702. This Court also held that Louisiana owned all islands in the eastern half of the river (410 U.S. at 712). But as to islands in the western half, this Court suggested that the United

States might have a claim of ownership; accordingly, the case was remanded to the Special Master for determination of that question.

On remand, the United States was permitted to intervene, and Louisiana moved to enlarge the reference to the Special Master to include the establishment of the lateral boundary in the Gulf of Mexico. *Texas* v. *Louisiana,* 413 U.S. 918. The Special Master's report recommending that the motion be granted was received, ordered filed, and adopted by this Court on October 15, 1973. *Texas* v. *Louisiana,* 414 U.S. 904.

On remand, under the enlarged reference, the Special Master was presented with three tasks: (1) to mark the geographic middle of the Sabine River; (2) to determine the ownership of islands lying in the western half of the river; and (3) to determine the lateral boundary in the Gulf of Mexico.

The interest of the United States extends only to the determination of the lateral boundary.[1] That interest arises because, under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.,* Texas' submerged lands grant extends up to 9 miles offshore while Louisiana's grant extends only 3 miles. Thus, the fixing of the lateral boundary will, between the 3-mile limit of the Louisiana grant and the 9-mile limit of the Texas grant, determine the respective rights of Texas and the United States in the natural resources of the sea-bed.

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[1] At trial the United States asserted a claim of ownership to one island in the western half of the river. The Special Master found that the United States had not established title to the island (Report, pp. 15–21), and no exception has been filed concerning that finding.

The Special Master found that Texas and Louisiana have never had an established boundary in the Gulf of Mexico and he recommended that the boundary be fixed as a line running seaward from the midpoint at the mouth of the Sabine River, remaining at all points equidistant from the present coastlines of Texas and Louisiana (Report, pp. 21–48, 49). The United States agrees with these findings and recommendations, and, as we shall show, they are consistent with applicable principles of domestic and international law.

Texas, however, has filed exceptions to these findings, contending that there existed an historic lateral boundary between the States that differs from that recommended by the Special Master.[2]

While we respond to Texas' arguments in detail hereafter, we believe it important at the outset to discuss two general premises underlying Texas' position. These premises, which are based on characterizations of the Special Master's Report, are, in our view, fundamentally erroneous.

First, Texas asserts (Tex. Br., p. 2) that the Special Master held that "Texas and Louisiana have never had a Gulfward boundary between their areas of jurisdiction." In fact, however, the Special Master found that a lateral boundary had never been *established* (Report, p. 37). This finding is manifestly correct, and it is entirely consistent with Texas' conten-

[2] Louisiana has not filed exceptions to the Special Master's findings and recommendations concerning the offshore boundary. The City of Port Arthur, which had intervened in this action for purposes of the island claims, has asserted no interest in the offshore line.

tion that there was an historic "inchoate" boundary. The existence of an inchoate boundary does not resolve the lateral boundary issue, for, as the Special Master found (Report, p. 37), there is no basis for reconstruction of an historic boundary.

Texas' second erroneous premise (Tex. Br., pp. 2–3) is that the Special Master held that the lateral boundary was to be determined "solely by avulsive, man-made additions to the shoreline—the jetties." In fact, the Special Master found that the lateral boundary was to be constructed by use of the median line principle (Report, p. 30), that is, a line which is at all points equidistant from points on the coastlines of Texas and Louisiana, of which the Sabine Pass jetties form a part. The Special Master's finding that the jetties are part of the coastline is correct (see pp. 21–27, *infra*) and is *not* tantamount to a finding that the lateral boundary is to be constructed solely by reference to their existence.[3]

[3] Texas' suggestion (Tex. Br., p. 3, n. 1) that the Master's findings concerning the jetties rests "on the stated basis that under the law of prescription and acquiescence, Texas has lost its right to contend for any other line" is incorrect. The structure of the Special Master's Report shows that his reference to prescription and acquiescence occurred in the context of fixing the boundary between the States from 30° North Latitude into the Gulf of Mexico (Report, pp. 7, 13–15). To the extent the jetties are considered to extend the mouth of the Sabine River into the Gulf (Report, p. 15), prescription and acquiescence indicate that the boundary between the States to the terminus of the jetties is the geographic middle of the jetties. This is consistent with the Special Master's findings in his first report, supported by Texas, that acquiescence and prescription indicated that the river boundary was the geographic middle.

The Special Master did not rely on acquiescence and prescription in finding the jetties to be part of the coastline for pur-

SUMMARY OF ARGUMENT

The Special Master's findings are fully supported by the facts of this case and the applicable law. First, the Special Master was correct in finding that Texas and Louisiana have never had an established offshore lateral boundary. The statutes admitting each State to the Union contained elaborate boundary descriptions but neither included a segment extending offshore from the terminus of their mutual boundary at the mouth of the Sabine River.

Nor do the subsequent acts of either State legislature evidence any agreement on such a boundary. Both States have enacted separate offshore lateral boundaries which result in a large pie-shaped area of the continental shelf claimed by both. State maps and law enforcement practices indicate that even within each State there was no consistently accepted offshore line and there was certainly no agreement between them. Finding no existing boundary, the Special Master properly considered how such a boundary should be now constructed.

The lateral offshore boundary between Texas and Louisiana is a line which is at all times an equal distance from the present coastlines of the two States. There is little dispute about the use of the equidistance principle. Texas and the United States espoused it in this litigation and Louisiana has not taken exception to its use by the Special Master. The dispute, instead,

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poses of the lateral boundary in the Gulf of Mexico. As to that finding, the Special Master correctly relied on Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606 ("Geneva Convention") and other applicable principles. See Report, pp. 15, 21–48.

concerns the coastline to which the principle is to be applied.

Texas argues that had Congress considered the matter it would have applied the equidistance principle to establish this lateral boundary at the time of Texas' admission to the Union. But there is no way of knowing what line Congress would have drawn even if we were required to make that determination. The equidistance line is recognized in the 1958 Geneva Conventions on the Law of the Sea. It is clearly the law to be applied in determining lateral boundaries. However, the history of those Conventions and International Court of Justice opinions are just as clear that there was no recognized method of lateral boundary determination prior to the Conventions. Thus, there is no basis for assuming that equidistance principles would have been used by the Congress.

In any event, no line was drawn by Congress. The boundary is being described in this litigation for the first time. It must, therefore, be constructed with modern principles as they are applied to existing facts. The equidistance principle is admittedly the method to be used. An equidistant line, by definition, is a line measured from the baseline from which the territorial sea is measured. The territorial sea of the United States is measured from the existing low-water lines, whether found on natural or artificial structures, and the closing lines across inland waters, as this Court has often held.

The Special Master properly applied the equidistance principles to the baseline of the territorial

sea as it existed at the time of his determination. Modern coastlines have consistently been used for constructing equidistance boundaries in both domestic and international controversies and were properly used by the Special Master here.

ARGUMENT

I

THE SPECIAL MASTER WAS CORRECT IN FINDING THAT A LATERAL BOUNDARY SEPARATING THE JURISDICTIONS OF TEXAS AND LOUISIANA IN THE GULF OF MEXICO HAD NOT BEEN ESTABLISHED PRIOR TO THIS LITIGATION

A. HISTORIC BOUNDARY DESCRIPTIONS DO NOT INCLUDE A LATERAL OFFSHORE BOUNDARY

Texas alleges that it has had a lateral boundary in the Gulf of Mexico since 1836. At that time the seaward boundary of Texas, as an independent Republic, was described as follows:

> beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande * * *. [1 Laws, Republic of Texas, 133 (1838).]

This boundary was recognized by Congress when Texas was annexed in 1845, 5 Stat. 797, and again when Texas was permitted to extend her boundary to the middle of the Sabine. (The boundary had previously extended only to the west bank of the river.) Louisiana's Act of Admission includes similar language making it clear that the boundary began at the mouth of the Sabine. 2 Stat. 701, 703.

Texas had taken the position for purposes of this litigation that the foregoing language can be interpreted as describing a lateral boundary between the 9-mile area recognized for purposes of its Submerged Lands Act grant and Louisiana's similar 3-mile area.

The Special Master carefully considered the language of each document relied upon by Texas and concluded that they do not describe a lateral boundary in the Gulf (Report, pp. 36–37):

> The problem is getting from the mouth of the Sabine to a point three leagues out in the Gulf. * * * The quoted language from the 1836 Act of the Republic of Texas simply does not describe or delimit any lateral boundary line from the mouth of the Sabine gulfward. No meridian is chosen, no angle of departure from the coast is referred to, nor is any point in the Gulf three leagues from land specified. Given the total lack of relevant language in the statute, there is no indication of how or where a lateral boundary was to be constructed. Statutory interpretation cannot supply missing words of such importance.

Texas essentially ignores this finding and cites as legal precedent for its position only decisions in which this Court construed language that described existing boundaries. *Wisconsin* v. *Michigan*, 295 U.S. 455; *New Mexico* v. *Texas*, 275 U.S. 279; *Minnesota* v. *Wisconsin*, 252 U.S. 273. In each instance the boundary was described. Although the descriptions varied in precision, each contained language that could be applied to facts on the face of the earth to reconstruct the in-

tended line.[4] No such language is contained in any of the boundary descriptions offered by Texas in the present case.

Texas' reliance on *United States* v. *Louisiana,* 363 U.S. 1, is misplaced. In that case the issue presented was simply the seaward limit of Texas' historic offshore boundary. That boundary—3 leagues—is defined in the relevant legislative materials. But, as shown above, the lateral boundary in the Gulf of Mexico is not so defined. Thus, the Special Master carefully reviewed all of the opinions in *United States* v. *Louisiana, supra,* and correctly concluded (Report, p. 39): "most if not all of the members of the Supreme Court, whether in concurrence or in dissent, recognized that lateral boundaries were not being determined when Texas was admitted into the Union."

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[4] The boundary language being interpreted in each case read as follows:

Wisconsin v. *Michigan*: "'* * * to a point in the middle of said lake [Michigan], and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonie river * * *'" and, "'* * * thence, down to the centre of the main channel of the same [Menomonie river], to the centre of the most usual ship channel of the Green Bay of Lake Michigan; thence, through the centre of the most usual ship channel of the said bay to the middle of Lake Michigan * * *.'" 295 U.S. at 457.

New Mexico v. *Texas*: "'* * * thence following the main channel of said river, as it existed on the ninth day of September, one thousand eight hundred and fifty * * *.'" 275 U.S. at 302.

Minnesota v. *Wisconsin:* "'Thence [with the northwesterly boundary of Michigan] down the main channel of the Montreal River to the middle of Lake Superior; thence [westwardly] through the centre of Lake Superior to the mouth of the St. Louis River; thence up the main channel of said river to the first rapids in the same, above the Indian village * * *.'" 252 U.S. at 275–276.

B. THE EXISTENCE OF A FIXED LATERAL OFFSHORE BOUNDARY HAS NOT BEEN INDICATED IN 140 YEARS OF PRACTICE

As shown above, historical materials describing the boundaries of Texas and Louisiana do not describe an offshore lateral boundary. Nor do the practices of Texas, Louisiana and the United States for the last 140 years suggest that there has been a fixed lateral boundary in the Gulf since 1836.

Although Texas insists that the 140 year old boundary begins at the midpoint of the mouth of the Sabine River, as it existed in 1836, and extends offshore such that it is always equidistant from the coastlines of Texas and Louisiana as they existed in 1836,[5] each of the States has unilaterally adopted statutory boundaries extending into the Gulf which have no relation to the line that Texas alleges to have existed for more than a century.[6] These lines are depicted on a chart which is attached to the Special Master's Report as Appendix A.

The United States agrees with the Special Master that these unilateral actions by the States, resulting in greatly divergent offshore claims, are of little aid in this case. If the two State legislatures had adopted the same line, their statutes might provide evidence of agreement and the existence of an established lateral boundary. But the statutory lines diverge so

[5] This date is sometimes referred to by Texas as 1845 or 1845/1848 but the argument remains the same.

[6] Acts 32 and 33 of the 1954 Regular Session of the Louisiana Legislature. Article 5415a, 15A Vernon's Annotated Texas Civil Statutes (1962).

greatly that, under these lines, each State claims a large area of the Gulf claimed by the other. Thus, the statutory lines are evidence only that no lateral boundary has been established. Indeed, the wide variance between Texas' statutory boundary (labeled 3 on the Master's map) and the line proposed in Texas' exceptions to the Master's findings (labeled 1 on the Master's map) shows conclusively that not even Texas has considered the boundary to be fixed since the time of its annexation by the United States.

Moreover, neither of the States has at any time relied on Texas' proposed line for any state purpose. Both States introduced numerous exhibits which show that fisheries enforcement was carried on in areas around the Sabine Pass jetties without any reference to a boundary based on either the 1836 or the 1845 coastline.[7]

The various maps introduced in hearings before the Special Master are consistent with this conclusion. Not one published map depicted the Texas/Louisiana boundary as extending into the Gulf along the line which Texas now contends is the long established boundary. To the contrary, all maps either continue the mid-river boundary to the end of the jetties or, as Texas emphasized in its Brief in Support of Exceptions, p. 32, end the boundary near the

[7] See Texas Exhibits III and III-1, and Louisiana Exhibits WWW and XXX, which indicate that each State has enforced its laws without regard to a boundary drawn from the 1836 or 1845 coastline.

northern end of the jetties. While Texas uses the latter fact to support its contention that it has not acquiesced in a boundary line running midway between the jetties, it is equally supportive of the Special Master's finding that there has been no established lateral boundary in the Gulf of Mexico.

Moreover, contrary to the assertion of Texas (Tex. Br., p. 32), there is a Texas map in evidence which supports the Special Master's finding that Texas had acquiesced in a boundary running between the jetties. A line beginning at the southern end of the jetties was used when the State of Texas portrayed its statutory boundary on a map as part of a project to allocate areas of the continental shelf to its various coastal counties. La. Ex. NNN. According to Mr. Giles, co-author of the Texas statutory boundary, the map was constructed by drawing a line "south from the mouth of the Sabine." Tr., p. 296. The easternmost line on that map, running southeasterly from the river mouth, was an attempt to depict the Texas statutory line. Tr., pp. 303, 332.

Dr. Hodgson, a geographer, and Mr. Harrison, a surveyor, confirmed that each of these lines is depicted as beginning at the seaward end of the jetties. Tr., pp. 194, 197, 603. Thus, the only map exhibit of Texas' statutory boundary introduced in these proceedings indicates that the river boundary ends, and the offshore boundary begins, at the seaward end of the Sabine Pass jetties.

II

THE SPECIAL MASTER CORRECTLY FOUND THAT THE LATERAL BOUNDARY BETWEEN TEXAS AND LOUISIANA IN THE GULF OF MEXICO SHOULD BE A LINE EQUIDISTANT FROM THE PRESENT COASTLINE OF THOSE STATES

A. IT CANNOT BE DETERMINED HOW CONGRESS WOULD HAVE CONSTRUCTED A LATERAL BOUNDARY IN THE 1840'S

Texas and the United States have agreed throughout this litigation that the lateral boundary should be constructed by the median line, or equidistant, principle. The principle results in a line which is at all times the same distance from the nearest points on the coastlines of the adjacent States. Disagreement arises, however, concerning what features are properly considered part of the coastline for purposes of construction of the line. The Special Master found, and the United States agrees, that this is a modern dispute to be resolved through the application of present law to present facts. Texas contends that the boundary descriptions discussed at pp. 7–10, *supra,* refer to an inchoate lateral boundary, or a boundary in contemplation of law, which should be constructed as Congress would have done in 1845 had it considered the matter.

Texas' 1836 boundary act described the dividing line between the Republic of Texas and the United States as the Sabine River. It also claimed a 3-league marginal sea. Texas suggests that connection of these

two segments constitutes an inchoate boundary. But the Special Master properly found that the Texas boundary description provides no clue as to how the connection is to be made. Texas, recognizing the absence of a usable description, argues that Congress would have constructed a median line from the 1845 coastlines of Texas and Louisiana. The fact that Congress did not do this should end the matter. But assuming that the Special Master were required to determine what Congress would have done had it considered the question, the United States submits it cannot be demonstrated that Congress would have adopted the median line principle.

Although the median line is clearly the principal method used today under the Geneva Conventions on the Territorial Sea and the Contiguous Zone and on the Continental Shelf,[8] neither this method nor any other principle for constructing lateral boundaries had evolved by the mid-nineteenth century. Texas' citation (Tex. Br., pp. 25–28) of a few examples of the mid-point principle being used in the 1800's to establish a boundary between opposite, not adjacent, States, does not establish that Congress would have employed the equidistant principle had it considered constructing a lateral boundary between Texas and Louisiana.[9]

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[8] Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606; Convention on the Continental Shelf, 15 U.S.T. 471.

[9] Only one example cited by Texas (Tex. Br., p. 24)—*The Grisbadarna* case—involved a lateral offshore boundary. Scott, Hague Court Reports, 121–140 (1916). That boundary had been

The median line principle is today set out in Article 12 of the Territorial Sea Convention and Article 6 of the Continental Shelf Convention.

The history of these Articles sheds an interesting light on Texas' apparent contention that an equidistant lateral boundary was fixed as of 1848. In 1947, the General Assembly of the United Nations established the International Law Commission. That Commission was assigned the task of preparing draft Articles which might become the basis for international law governing rights in the territorial sea, the high seas and the continental shelf. Among the many issues facing the Commission was the proper means of establishing lateral boundaries separating the territorial seas of adjacent coastal States. The Commission studied the matter and, finding no existing law or practice which was conclusive of the question, sought the advice of a Committee of Experts.[10] Four alternative methods of delimitation were proposed for the consideration and comments of the experts.[11] These

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fixed in a treaty between Sweden and Norway and is often used as an example of a boundary drawn at right angles to the general direction of the coast, an entirely different principle from that advocated by Texas here.

[10] Whiteman, *Digest of International Law*, Vol. 4, p. 326 (1965).

[11] For a survey of the history of these principles, including a discussion of state practice with respect to alternatives and information on which States supported which proposals, see Whiteman, *Digest of International Law*, Vol. 4, pp. 323–335 (1965). The United Nations document, quoted *id.* at pp. 326–327, indicates that the United States representative to the International Law Commission in 1952 favored the "perpendicular to the coastline" method, used in the *Grisbadarna* case, rather than the median line.

were: (1) the continuation in the seaward direction of the land frontier between the two adjacent coastal States concerned; (2) the drawing of a line perpendicular to the coast at the point of its intersection with this land frontier; (3) the drawing of a line perpendicular to the line of the general direction of the coast; and (4) the line equidistant from the two coasts. The Committee recommended the equidistant principle. In the Report of the International Law Commission to the General Assembly covering the work of its eighth session, the Commission proposed an article on delimitation of the territorial sea of two adjacent States which incorporated this position. *2 Yearbook of the International Law Commission* 253, 272, (1956). Following that article the Commission commented on the alternative methods which had been considered, explaining the drawbacks of each. *Ibid.*

The Commission recognized a relationship between lateral boundaries within the territorial sea and those over the continental shelf and considered it important to find a formula that could be applied to both.[12] Consequently, continental shelf policies may also provide a useful tool in evaluating the alternative boundary proposals put forth in this litigation.

The Truman Proclamation of September 28, 1945, is not only credited with being the first national claim to the continental shelf but is also often cited as evidence that no principles, other than equity, existed for establishing lateral boundaries in 1945. International

[12] See *1 Yearbook of the International Law Commission* 75, 77, 79 (1953).

Court of Justice, *Yearbook 1968–1969,* p. 104. In claiming the adjacent continental shelf for the United States, President Truman stated: "In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles." Proclamation No. 2667, Sep. 28, 1945, 10 Fed. Reg. 12303.

In 1848 only "equitable apportionment" was recognized in international law for the delimitation of lateral boundaries. The International Court of Justice commented extensively on the matter in its decision in the *North Seas Continental Shelf Cases,* Judgment, I.C.J. Reports, 1969, p. 3. That litigation was instituted when the nations bordering on the North Sea could not agree on the division of the continental shelf beneath that body of water. Denmark and the Netherlands argued that the equidistant principle was an established principle of international law which dictated the means by which the shelf must be allocated in the absence of agreement. Citing the Truman Proclamation, and referring to other coastal State proclamations which had followed it using similar provisions for resolving lateral boundary disputes, the court concluded (*id.* at 33):

> It was in the International Law Commission of the United Nations that the question of delimitation as between adjacent States was first taken up seriously as part of a general juridical project; for outside the ranks of the hydrog-

> raphers and cartographers, questions of delimitation were not much thought about in earlier continental shelf doctrine.

The court found that, even in 1969, the equidistance principles had not achieved the status of a rule of customary international law. It held that no other single method of delimitation was in all circumstances obligatory; that delimitation was to be affected by agreement in accordance with equitable principles and taking account of all relevant circumstances. *Id.* at 46, *et seq.*

It is clear from these examples that States constructing a lateral boundary in the mid-1800's would not have been bound to the equidistant principle. Prior to 1958, at least, only agreement and "equitable principles" would have been used in the construction of such a boundary.

As noted by the Special Master (Report, p. 39), there is not sufficient evidence in this case to reconstruct enough of the 1845 coastline to construct a median line even if that were the proper approach. The Special Master properly declined Texas' invitation to guess at the location of the 1845 coastline, speculate concerning the principles that would have been applied in 1845, and construct a lateral boundary based on that conjecture. Rather, the Special Master, finding that the boundary has never been established, correctly proceeded to establish it by an application of existing law to existing facts.

B. THE GENEVA CONVENTIONS OF 1958 PROVIDE THE LATERAL BOUNDARY PRINCIPLES TO BE APPLIED HERE

The present law regarding the construction of lateral boundaries is found in the Geneva Law of the Sea Conventions of 1958. Article 12(1) of the Territorial Sea Convention provides that:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

Article 6 of the Continental Shelf Convention contains almost identical language.

These articles provide the law governing this case. It is a well established principle of domestic law that international law is applicable to boundary disputes between the individual States. *Wisconsin* v. *Michigan,* 295 U.S. 455; *New Jersey* v. *Delaware,* 291 U.S. 361; *Louisiana* v. *Mississippi,* 202 U.S. 1.

Moreover, this Court has recognized that the United States is a party to the Convention on the Territorial Sea and the Contiguous Zone and has specifically adopted it for purposes of defining the coastline and

the limit of inland waters of the United States under the Submerged Lands Act. *United States* v. *California,* 381 U.S. 139, 165. In so doing the Court noted (*ibid.*) that:

> the comprehensiveness of the Convention provides answers to many of the lesser problems related to coastlines which, absent the Convention, would be most troublesome.

The construction of offshore lateral boundaries is one such problem.[31]

Mr. Richard Young, Texas' expert on international law, acknowledged the Convention might be helpful in resolving the issue before the Master. Tr., p. 1072. Attorney General Hill of Texas concurred when commenting in his opening statement that (Tr., p. 808):

> I know this Court wants to write this report on something * * * meaningful, I would say that the Geneva Conference ought to have a very high place in our law and in this kind of determination.

1. *In the absence of a boundary agreement, the Geneva Conventions prescribe a median line boundary.*—The Conventions establish two fundamental principles: First, prior to agreement, neither of two adjacent States may extend its lateral offshore jurisdiction beyond a median line, and, second, that line is measured from the baseline from which the territorial sea is measured.

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[31] See Griffin, W. L., "Delimitation of Ocean Space Boundaries Between Adjacent Coastal States of the United States," Proceedings of the Third Annual Conference of the Law of the Sea Institute, University of Rhode Island, June 24–27, 1968, p. 150.

This litigation attests to the fact that there has been no agreement concerning the lateral boundary in the Gulf of Mexico. As shown earlier (p. 13, *supra*), there is no dispute as to the proper method for constructing a median line. The parties disagree only on what features of the coastline may be used as basepoints from which to measure that line.

2. *The median line is measured from the baseline from which the territorial sea is measured—including harborworks.*—Any feature which is part of the coastline for purposes of territorial sea measurement may be used for median line construction. Article 8 of the Convention provides that harborworks are part of the coastline for that purpose. Texas cites (Tex. Br., p. 45) a number of cases in support of its contention that a boundary may not be changed by artificial or avulsive changes in the coastline from which it is measured. However, each of these cases involves a river boundary, not an offshore boundary. Cases concerning state boundaries within rivers are simply not in point.[14]

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[14] These cases are irrelevant to the present proceedings because they relate entirely to inland water boundaries—not seaward boundary questions. Because of the relationship of seaward boundaries not merely to the coastal States involved but to the international community which utilizes and depends upon the adjacent high seas, international law has specifically recognized different rules for the adjacent seas than for inland waters, including different rules for delimiting the boundaries of the States adjacent to those waters. Although this proposition is almost too obvious to warrant further argument, we call the Court's attention especially to the right of innocent passage in territorial waters and the effect of artificial structures on the boundary delimiting those waters—neither of which is applicable to inland waters, such as rivers and lakes, which separate two countries.

Under the Convention offshore boundaries are measured from the coastline. This Court has consistently held that the coastline changes with all natural accretion, erosion, reliction or subsidence as well as artificial changes. *Hughes* v. *Washington,* 389 U.S. 290; *United States* v. *California,* 381 U.S. 139. It also has recognized that boundaries based upon a coastline are affected by artificial structures under both international and domestic law. *Id.* at 176–177; *United States* v. *California,* 382 U.S. 448, 449; *United States* v. *Louisiana,* 382 U.S. 288, 290.

Even if it is assumed that there has been an "inchoate" offshore boundary between Texas and Louisiana since the mid-1800's, that boundary has changed as the coastline from which it is measured, whether natural or artificial, has changed. Such boundaries continue to change until fixed by agreement or, as in this case, by litigation.[15]

3. *The line recommended by the Special Master is consistent with international practice in lateral boundary construction.*—Under international practice lateral boundaries have not been considered fixed prior to agreement between the adjacent nations. The testimony of Dr. Robert Hodgson, the government's expert geographer, and international boundary studies

[15] Mr. Young, Texas' expert on international law, agreed that under the Convention lateral boundaries do not become fixed until agreed upon. When asked whether a median line boundary would move from day to day as the coastline moves, Mr. Young testified that "[U]ntil defined, it presumably would." Tr., p. 1076. Texas' statutory boundary and enforcement practice are evidence that not even the State recognized the line which it now alleges to have been fixed for so many years.

compiled by him (U.S. Ex. QQQ) concerning the practice of nations in negotiating offshore lateral boundaries, established that foreign States have not attempted to reconstruct historic coastlines for purposes of applying the Convention's median line principle but have in fact gone to great lengths to construct the most up to date charts possible for use in their negotiations. Tr., p. 560. Dr. Alexander, Texas' expert geographer, confirmed that position, stating that he could recall no instance in which historic coastlines had been used. Deposition of Dr. Alexander, Tex. Ex. LLL–1, 54.

The most pertinent example of international practice is the recent agreement between the United States and Mexico that establishes lateral offshore boundaries in the Gulf of Mexico and the Pacific Ocean. U.S. Ex. SSS. Dr. Hodgson, who represented the United States in the negotiations leading to that agreement, testified that the United States and Mexico constructed new charts so that the baseline from which their median line was measured would be accurate to within a month of the time that the boundary was agreed upon. Tr. p. 565. This was done even though treaties between the United States and Mexico beginning in 1848 had referred to the offshore boundary and even though information on the location of the 1845 coastline near the Rio Grande was readily available to the parties. Tr., p. 566.

Notably, in the intervening years between the Treaty of Guadelupe-Hidalgo in 1848 (9 Stat. 922) and 1970, the mouth of the Rio Grande moved as much as a mile along the Gulf Coast. Nevertheless, the parties did not attempt to reconstruct a median line from the coast-

line as it existed at the time of the original and less precise treaty but instead constructed a line equidistant from the present coastlines of the two nations.[16]

Texas' entire theory of this case rests on the assumption that since Texas and Louisiana had territorial boundaries in the adjacent seas in 1845 there must have been a lateral boundary dividing their respective offshore areas[17] and that the specific location of that boundary was fixed at some time in the past. However, the evidence in this case establishes that Texas' theory is inconsistent with international law and practice, including the practice of the United States.

Dr. Hodgson testified that all of the countries which he considered in his international boundaries study had territorial sea claims prior to their negotiations on lateral boundaries. Nevertheless, he knew of none of these countries which insisted that a specific "inchoate" boundary line must always have existed and

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[16] As it turned out, the boundaries of Texas in the adjacent sea were diminished as a result of constructing the lateral boundary from the modern rather than the historic coastline. The State apparently made no objection either to the methods adopted or the outcome of the negotiations. See testimony of Dr. Hodgson, Tr., pp. 567–569.

[17] As this Court indicated in *United States* v. *Texas*, 339 U.S. 707, and *United States* v. *Louisiana*, 339 U.S. 699, neither Texas nor Louisiana possessed the adjacent seas as their territory or property. To the extent that those States had boundaries in the marginal sea, they could exercise certain police powers within those boundaries but only when the exercise of those powers did not conflict with the powers of the federal government, including its power over foreign affairs. *United States* v. *California*, 332 U.S. 19.

should be reconstructed as the permanent lateral boundary. Tr., p. 560.

International practice has, instead, been to construct a median line boundary from the present coastline regardless of any theory that there must have been some line separating the jurisdictions of adjacent coastal States in the past.

4. *The line recommended by the Special Master is consistent with practice among States of the United States.*—Various States of the United States have faced the situation found here and have agreed upon offshore boundaries extending seaward from the outer ends of the jetties. As noted by the Special Master, (Report, p. 31), Florida and Georgia have also a river boundary. That river also happens to have jetties at its mouth. Despite the fact that the jetties were constructed after the States were admitted to the Union, they have agreed that their river boundary extends to the seaward end of the jetties and that their offshore lateral boundary is determined with reference to the jetties.[18]

The States of Minnesota and Wisconsin adopted the same principle when they settled their common boundary in Lake Superior. That boundary was described in Wisconsin's Enabling Act as beginning at the Michigan/Wisconsin boundary in the lake and running "thence through the centre of Lake Superior to the mouth of the St. Louis River * * *." 9 Stat. 56. However, the boundary was not precisely fixed until

[18] This agreement has been approved by Congress. See 84 Stat. 1094.

a Compact was reached between Michigan, Wisconsin and Minnesota in 1948. Representatives of Minnesota and Wisconsin agreed upon a boundary made up of a series of straight lines, the turning points on which are equidistant from prominent points on the shorelines of the two States. By 1948 jetties had been built at the mouth of the St. Louis River, and these structures were used as part of the coastline from which the boundary was constructed. Minnesota and Wisconsin did not attempt to reconstruct their common boundary as it might have existed at some earlier time. They dealt with the coastline as it existed in 1948, which included the government jetties.[19]

The line recommended by the Special Master in his report is consistent with the requirements of the Geneva Conventions. Regardless of where the mouth of the Sabine is located, the line proposed is at all times an equal distance from the coastlines of Texas and Louisiana. The west jetty is manifestly a feature of the Texas coast. The east jetty is just as obviously a feature of the Louisiana coast, as this Court has previously held. *United States* v. *Louisiana,* 363 U.S. 1. The line runs squarely between those two jetties and then continues offshore so as to remain at equal distance from each. Because of the length of the jetties they are the only coastline features which affect an

[19] The final point on that boundary line is described as "the midpoint in a direct line at right angles to the central axis of the Superior entry between the tops of the eastern ends of the pierheads at the lakeward ends of the United States Government breakwaters * * *." 62 Stat. 1153.

offshore boundary of up to 9 miles and an equidistant line beginning at the midpoint of a line drawn between the tips of the jetties is a straight line perpendicular to that closing line.

5. *"Special circumstances," if any, in this case support the line recommended by the Special Master.*—In the alternative, Texas contends that the existence of the Sabine Pass jetties creates a "special circumstance" which requires that they be ignored in constructing a lateral boundary. Article 12 of the Territorial Sea Convention does provide that the median line principle need not be employed where special circumstances make it necessary to use other means. But the Special Master found, and the United States agrees, that if the jetties create a special circumstance, it is one which requires that they be considered in construction of a lateral boundary, not that they be ignored. Report, p. 45.

Texas and Louisiana have proposed boundaries which would intersect the jetties.[20] These proposed boundary lines would have the effect of making the seaward end of the eastern jetty part of Texas or the seaward end of the western jetty part of Louisiana, depending on which State's theory is being considered. In either case the effect would be to create a peninsula which is attached only to one State and yet

[20] One of Louisiana's alternative lines crossed the west jetty. However, that and other Louisiana proposals have apparently been abandoned in favor of the Special Master's recommended line, since Louisiana has filed no exception to his offshore findings and recommendations.

belongs to the other.[21] As Dr. Hodgson explained, one of the advantages of the equidistant principle is that it produces a boundary that does not intersect land forms as would occur under the lines proposed by the States in this litigation. Tr., pp. 588–589. Thus, adoption of the lines proposed to the Special Master by either Texas or Louisiana would be inconsistent with the underlying purpose of the equidistant principle.

Moreover, one of the special circumstances considered by the International Law Commission was the existence of navigation channels in the area of a lateral boundary. Texas' proposed boundary would encompass the entire navigation channel within Texas' jurisdiction. But the International Law Commission believed that where there is such a channel it should not be ignored as a relevant factor in locating the lateral boundary. The Special Master's proposed line assures that one-half of the Sabine channel between the jetties remains within the jurisdiction of each State.

Texas also suggests that a special circumstance exists here because Louisiana measures its Submerged Lands Act grant from the east jetty while Texas does not measure its grant from the west jetty.[22] The

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[21] The fact that the peninsulas are artificially constructed is of no significance here. As we have shown above, manmade harbor-works are as much a part of a State's coastline as are natural features.

[22] Texas does not measure its grant from the jetty because it elected a 9-mile Submerged Lands Act grant measured from the historic coastline. Texas may, if it chooses, accept the standard 3-mile grant measured from the present coastline including the west jetty.

Special Master properly recognized (Report, p. 45) that the coastline used for Submerged Lands Act purposes is not necessarily the baseline from which the median line lateral boundary is constructed. The latter is the baseline of the territorial sea, and it is clear that the United States' territorial sea is measured from both jetties. U.S. Ex. NNN.

Texas emphasizes that witnesses for both sides agree that the construction of a median line using the east jetty and not the west jetty would result in an inequitable line. Tex. Br., pp. 39–41. But this is simply a straw man because no one has ever proposed such a line. The Special Master's recommended lateral boundary properly applies the same principles for Texas and Louisiana, being measured form the present coastline, including the jetties, of both States. The United States' expert did not testify that the Special Master's recommended line is inequitable.

The lateral boundary recommended by the Special Master is consistent with both domestic and international practice of the United States. It is measured from the same baseline that the States either use or could use in measuring their Submerged Lands Act grants [23] and that the United States uses in measuring its territorial sea. Dr. Alexander, testifying for the State of Texas, agreed that our national boundary is determined by reference to the jetties and that similar jetties, if they existed on our border with a foreign country, should be taken into account in constructing

[23] As noted by the Special Master, Texas does use its modern coastline for Submerged Lands Act purposes when it is landward of the historic coastline. Report, pp. 27–28.

an offshore lateral boundary. Tex. Ex. LLL–1, p. 50. Dr. Hodgson testified that he could see no reason for using different methods for determining lateral boundaries between our coastal States than those used to determine such boundaries internationally. Concurring with Dr. Alexander, he testified that he had never read the works of any authorities which suggested the use of different methods, and Texas has suggested no sound reason why a different method should be used. (Tr., pp. 745–746.)

Finally, the lateral boundary proposed by the Special Master is both practical and equitable. It is at all points equidistant from the coastlines of Texas and Louisiana, and it is a straight line for its entire length, precisely defined by reference to permanent points. It establishes a single, easily identifiable boundary for all purposes.

CONCLUSION

For the foregoing reasons, the State of Texas' exceptions to the Report of the Special Master should be overruled.

Respectfully submitted.

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1

SABINE PASS CHANNEL DEPTHS

From a report by the Corps of Engineers of Apr. 1, 1974

Name of Channel or Range	Controlling depths in channels entering from seaward in feet at Mean Low Water: Left outside quarter	Left inside quarter	Right inside quarter	Right outside quarter	Date of Survey	Project Dimensions: Width (feet)	Length (naut. miles)	Depth M.L.W. (feet)
Sabine Bank Channel	42	42	43	40	8-73	800	12.8	42
Sea Bar Channel	42	42	42	42	12-73	800	3.0	42
Jetty Channel	38	40	40	34	7-73	800-500	3.5	40

Note.-The Corps of Engineers should be consulted for changing conditions subsequent to the above.

STORM WARNINGS

The National Weather Service displays storm warnings at the following approximate location: Cameron La. (29°46.7'-93°20.5')

Extension of Straight Line Joining Intersection of 32°North Latitude and West Bank of Sabine River, and 1845 West Bank at Natural Mouth of Sabine River superceding line 5 of Texas and now agreed upon by Texas, Louisiana, and the United States

29°40'53.8" 93°50'59.3"

29°41'15.323" 93°50'11.722"

29°38'37.329" 93°49'30.940"

29°35'36.747" 93°49'30.940"

29°35'41.164" 93°48'45.510"

X=3,681,196 52 Y= 679,035 96

X=3,677,469 00 Y= 673,730 00

X=3,675,331 13 Y= 671,060 00

X=3,674,597 62 Y= 670,205 00

X=3,671,177 54 Y= 666,677 22

LEGEND

LINES AS REPRESENTED ON TEXAS EXHIBIT "DDD"

1. Median Line 1845 Shorelines
2. Median Line Present Shorelines
3. Texas Statutary Line S 35°55'22"E Grid

LINES REQUESTED TO BE DEPICTED BY SPECIAL MASTER

4. Median Line 1845 Texas Shoreline and Present Louisiana Shoreline
5. Extension of Straight Line Joining Intersection of 32°North Latitude and West Bank of Sabine River, and 1845 West Bank at Natural Mouth of Sabine River
6. Median Line 1845 Shorelines Ending at the West Bank

LEGEND

US Boundary Line

LEGEND

A. LOUISIANA PRIMARY POSITION as to the lateral boundary between Texas and Louisiana in the Gulf of Mexico

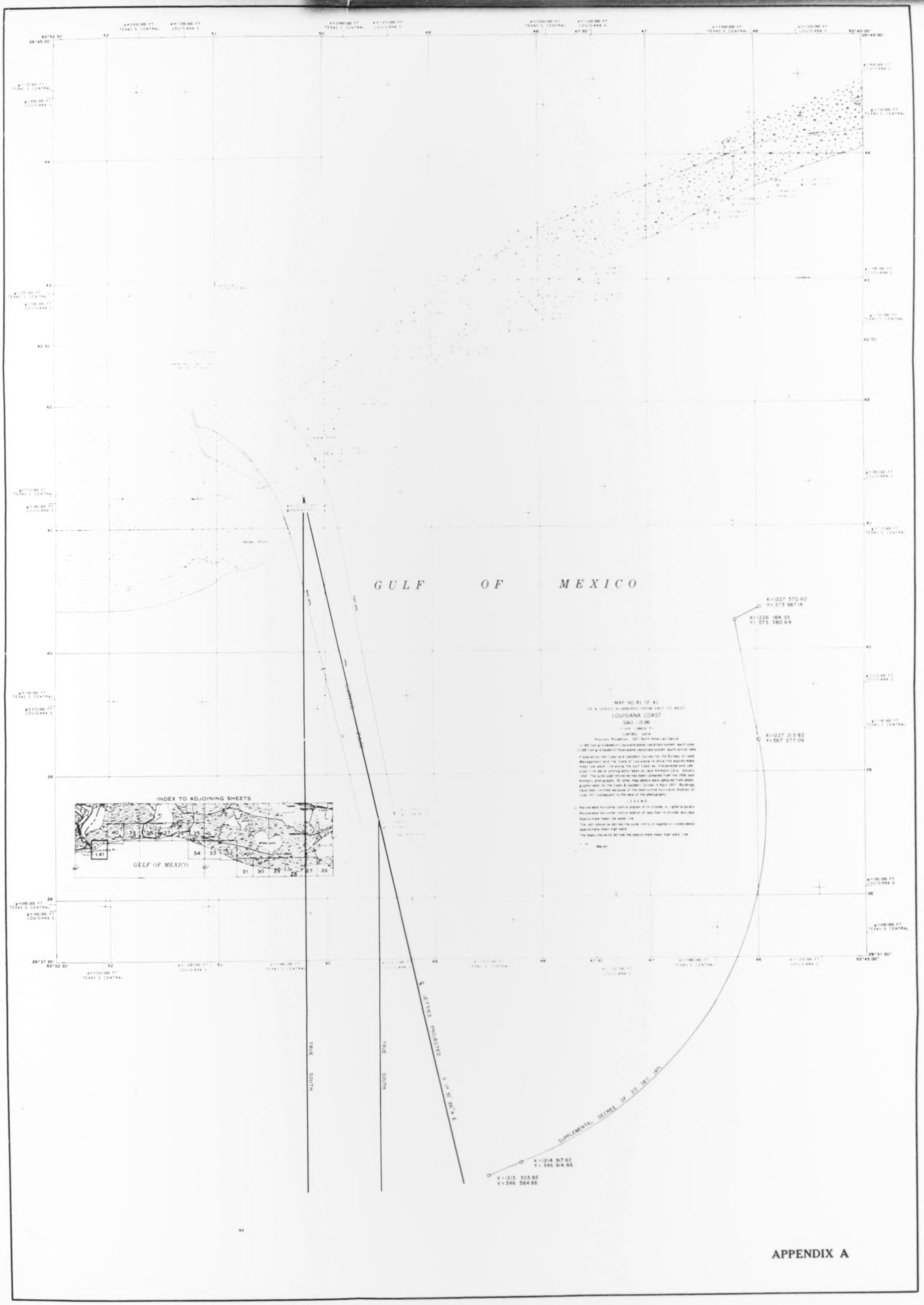
1. True South 3 Geographical Miles from the mid-point on the closing line at the seaward end of the Sabine Pass Jetties (Acts 32 and 33 of the 1954 Louisiana Legislature)

B. LOUISIANA ALTERNATIVE POSITIONS as to the lateral boundary between Texas and Louisiana in the Gulf of Mexico

2. Parallel to Republic of Texas boundary on west bank of Sabine Pass (1845) true south
3. Extension of Centerline Sabine Pass Jetties 3 geographical miles seaward from the mid-point on the closing line at the seaward end of the jetties

(JOINS CHART 1280)

2


GULF OF MEXICO
INDEX TO ADJOINING SHEETS
GULF OF MEXICO
MAP NO 41 OF 41
OF A SERIES NUMBERED FROM EAST TO WEST
LOUISIANA COAST
SCALE 1:20,000
CONTROL DATA
Projection: Projection 1927 North American Datum
LEGEND
TRUE SOUTH
TRUE SOUTH
JETTIES PROJECTED S 14° 31' 26" E
SUPPLEMENTAL DECREE OF 20 DEC 1971
X = 1227 370 60
Y = 373 987 14
X = 1226 184 93
Y = 373 380 64
X = 1227 213 82
Y = 367 277 09
X = 1214 917 82
Y = 346 914 56
X = 1213 303 82
Y = 346 584 86

APPENDIX A